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In The

Supreme Court of the United States

October Term, 1997

STATE OF MINNESOTA; Minnesota Department of Natural Resources; RODNEY SANDO, Commissioner of Natural Resources; ARNE CARLSON, Governor of Minnesota; RAYMOND B. HITCHCOCK, Assistant Commissioner of Operations, Minnesota Department of Natural Resources,

Petitioners,

v.

MILLE LACS BAND OF CHIPPEWA INDIANS, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FIFTH DIVISION

Fond de Lac Band of Chippewa Indians, Robert Peacock, Clifton Rabideaux, Herman Wise and George Dupuis,

Plaintiffs,

vs.

Arne Carlson, Governor of Minnesota, Rodney Sando, Commissioner of the Minnesota Department of Natural Resources, and Raymond B. Hitchock, Assistant Commissioner of Operations, Department of Natural Resources,

Defendants,

Proper Economic Resource Management and Minnesota Deer Hunters' Association,

Amici Curiae,

Robert J. Edmonds and Michael Sheff,

Applicants for Intervention.

Civil No. 5-92-159

MEMORANDUM OPINION AND ORDER

Douglas B.L. Endreson, Sonosky, Chambers, Sachse & Endreson, Washington D.C.; Dennis J. Peterson, Fond du Lac Reservation Legal Department, Cloquet, Minnesota;

and Henry M. Buffalo Jr., Jacobson, Buffalo, Schoessler & Magnuson, Minneapolis, Minnesota for Plaintiffs.

Scott R. Strand, Stephen B. Matsen, Jerilyn K. Aune, Michelle I. Beeman, and William A. Szotkowski, Minnesota Attorney General's Office, St. Paul, Minnesota, for Defendants.

Stephen Froehle, for amici curiae Proper Economic Resource Management and the Minnesota Deer Hunters' Association, and for Robert J. Edmonds and Michael Sheff, Applicants for Intervention.

Introduction

Before the Court are several summary judgment motions in this treaty rights action. Plaintiffs brought this suit pursuant to 42 U.S.C. § 1983, the Treaty of July 29, 1837, 7 Stat. 536 ("the 1837 Treaty"), and the Treaty of September 30, 1854, 10 Stat. 1109 ("the 1854 Treaty"). They seek a declaratory judgment that the rights of the Fond du Lac Band to hunt, fish and gather in the lands ceded by the 1837 and 1854 Treaties continue to exist. Assuming that those usufructuary rights exist, Plaintiffs further seek an adjudication of the appropriate allocation of natural resources, as well as a determination regarding the scope of the state's ability to regulate their exercise of those rights.

Defendants first moved for summary judgment on the basis of four threshold issues: collateral estoppel, Eleventh Amendment immunity, failure to join indispensable parties, and a statute of limitations defense. Plaintiffs have brought a cross-motion to strike those defenses. Plaintiffs have also filed a motion for partial summary

judgment based on the continued existence of the Fond du Lac Band's rights under the 1854 Treaty. Both parties have additionally moved for summary judgment concerning the rights given Plaintiffs in the 1837 Treaty and the effect of an 1850 Executive Order on those rights.

By this Court's Order dated October 3, 1994, the Court denied Defendants' motion with respect to the procedural defenses of the Eleventh Amendment, the statute of limitations, and failure to join indispensable parties. By that same Order, the Court granted in part and denied in part Plaintiffs' motion to strike these defenses. Defendants immediately appealed the denial of their defense based on Eleventh Amendment immunity. This Court's denial of immunity was affirmed by the Eighth Circuit, 68 F.3d 253 (8th Cir. 1995). This Memorandum Opinion and Order will address the remaining motions in the following sequence: 1) Defendants' collateral estoppel defense and Plaintiffs' motion to strike that defense; 2) Plaintiffs' motion for partial summary judgment regarding the 1854 Treaty; 3) Plaintiffs' motion for partial summary judgment based on the collateral estoppel effect of the litigation in *Mille Lacs Band v. State of Minnesota*; and 4) the renewed motion to intervene by landowners Robert Edmonds and Michael Sheff. This Memorandum Opinion and Order will resolve all motions pending before the Court.

Defendants' Collateral Estoppel Argument

I. Historical Background

The Chippewa, or Ojibwa Nation, which includes Plaintiff Fond du Lac Band, once occupied large portions

of present-day Minnesota, Wisconsin and Michigan. By the Treaty of 1837, the Chippewa ceded to the United States a swath of land east of the Mississippi River approximately 100 miles wide, from north to south, by nearly 200 miles across, from east to west. *Mole Lake Band v. United States*, 139 F. Supp. 938, 939 (Ct. Cl. 1956), *cert. denied*, 352 U.S. 892, 77 S. Ct. 130 (1956). Article 5 of the Treaty provided:

> The privilege of hunting, fishing and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guarantied [sic] to the Indians, during the pleasure of the President of the United States.

7 Stat. 536. On October 4, 1842, the Chippewa of the Mississippi and the Lake Superior Chippewa entered into another treaty with the United States by which they ceded additional land east of the Mississippi River. 7 Stat. 591 ("the 1842 Treaty").

On February 6, 1850, President Zachary Taylor issued an Executive Order purportedly revoking the privilege of the Chippewa to hunt, fish and gather wild rice on the lands ceded by the treaties of 1837 and 1842 and ordering their removal west of the Mississippi. The Chippewa resisted removal, making implementation of the Executive Order difficult, and the removal process was suspended. *See Mille Lacs Band v. State of Minnesota*, 861 F. Supp. 784, 807-09 (D. Minn. 1994).

In the 1854 Treaty, the Lake Superior Chippewa ceded additional lands to the United States in exchange for the creation of reservations for the signatory bands. The affected land area is described as follows:

> Beginning at a point, where the east branch of Snake River crosses the southern boundary-line of the Chippewa country, running thence up the said branch to its source, thence nearly north, in a straight line, to the mouth of East Savannah River, thence up the St. Louis River to the mouth of East Swan River, thence up the East Swan River to its source, thence in a straight line to the most westerly bend of Vermillion River, and thence down the Vermillion River to its mouth.

Treaty with the Chippewa of September 30, 1854, 10 Stat. 1109.

A reservation was set aside for the Fond du Lac Band at the western end of Lake Superior. Furthermore, Article 11 of the 1854 Treaty provided: " . . . And such of [the Chippewas of Lake Superior] as reside in the territory hereby ceded, shall have the right to hunt and fish therein, until otherwise ordered by the President."

In 1858, Minnesota was admitted into the Union. Act of May 11, 1858, 11 Stat. 285. In its first session, the Minnesota legislature enacted laws which prohibited the killing of certain game during part of the year and prohibited the use of seines, nets, baskets or traps to catch trout. 1858 Minn. Laws 40-41, 105. The first legislature also promulgated an act that extended the laws of the state to all Indians[1] residing within the state who went outside the boundaries of their reservations. *Id.* at 103-04.

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[1] The statute, in keeping with the large majority of governmental documents of this period, uses the term "Indians." Except when quoting or referring to historical documents, the court will use the term "Native Ameicans" or the name of the tribe.

In the fall of 1992, the Fond du Lac Band adopted an early big game firearms hunting season. The State objected and notified the band that its members would be arrested if they hunted before the seasons established by the State. Plaintiffs filed this action and sought a temporary injunction to prevent the State from enforcing its game and fish laws. The Court denied the requested relief on October 8, 1992.

II. The Indian Claims Commission Process

Prior to 1946, Congress traditionally addressed Indian claims for loss of aboriginal title through the promulgation of ad hoc jurisdictional statutes which waived federal sovereign immunity. Congress passed such a statute for the Wisconsin Chippewa in 1935. Act of August 30, 1935, Pub. L. No. 74-410, § 1, 49 Stat. 1049, 1049-50.[2]

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[2] The text of the Wisconsin Chippewa jurisdictional act reads as follows:

> [Sec.1] . . . [A]ll claims of whatsoever nature which the Chippewa Tribe or Bands of Indians of Wisconsin may have against the United States . . . may be submitted to the Court of Claims with the right of appeal to the Supreme Court of the United States by either party . . . for the determination of the amount, if any, due said Indians from the United States under any treaties, agreements, or laws of Congress, or for the misappropriation or waste of any of the funds or lands of said Indians or band or bands thereof or for the failure of the United States to pay said Indians any money or other property due; and jurisdiction is hereby conferred upon the Court of Claims . . . to hear and determine all legal and equitable claims, if any, of said Indians against the United States, and to enter judgment thereon.
>
> Sec. 2. If any claim or claims be submitted to said courts they shall settle the rights therein, both legal and equitable, of each and all of the parties thereto, notwithstanding the lapse of time or statutes of limitation. . . .

On April 1, 1940, pursuant to the statute, the Lake Superior Chippewa bands of Wisconsin (hereinafter "the Wisconsin Chippewa") filed suit against the United States in the Court of Claims. *Mole Lake Band v. United States*, 126 Ct. Cl. 596, 598 (Ct. Cl. 1953). The Fond du Lac Bank intervened in the *Mole Lake* litigation on August 30, 1940. *Id.* at 598-99.

In 1946, Congress created the ICC to hear tribal claims accruing before August 13, 1946. Indian Claims Commission Act of 1946, ch. 959, § 2, 60 Stat. 1050 (formerly codified at 25 U.S.C. § 70a).[3] Pursuant to the statute,

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[3] The jurisdictional provision of the ICC Act stated:

> The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska:
>
> (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President;
>
> (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United states if the United States was subject to suit;
>
> (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual

all of the Chippewa bands in Minnesota, including the Fond du Lac Band, filed claims with the ICC. The Court will set forth the history of each of these lawsuits in turn.

A. The *Mole Lake* Litigation

Following the Fond du Lac Band's intervention in the *Mole Lake* proceedings, the claims before the Court of Claims were severed into three dockets. The causes of action concerning swamp land, asserted only by the Wisconsin Chippewa, were tried separately and resolved by *Mole Lake Band v. United States*, 139 F. Supp. 938 (Ct. Cl. 1956). A number of Wisconsin Chippewa bands had also asserted a claim for timber taken from sections of their land that had been purportedly designated as "public school sections," which was also tried separately; that matter was dismissed. *Mole Lake Band v. United States*, 82 F. Supp. 342 (Ct. Cl. 1949). The rest of the petition, including those claims asserted by the intervenor Fond du Lac Band, remained on the original docket.

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or unilateral mistake, whether the law or fact, or any other ground cognizable by a court of equity;

(4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and

(5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity.

25 U.S.C. § 70a.

The original *Mole Lake* petition set forth a claim that

> . . . during the times herein mentioned a large number of plaintiffs comprised the bands of the plaintiffs herein, a substantial number of whom were male adults who made their living for themselves and their families during the greater part of the time exclusively by hunting and fishing. That the estimated value of the hunting and fishing rights to each of said Indians was at least Four hundred ($400.00) Dollars per annum for each hunter. *That as a part of said hunting and fishing privileges there was vested in plaintiffs, and recognized by defendant, riparian rights of unrestricted use for hunting, fishing, trapping and camping purposes within the ceded areas and territory described in the Treaties heretofore referred to. That defendant failed to maintain for plaintiffs such hunting, fishing, trapping and camping privileges thus ceded, and failed to protect them in the continued enjoyment thereof.* That by opening the ceded lands to settlement under the General Land Laws of the United States and admitting citizens to the use and occupation thereof, and by permitting the removal of timber the natural habitat of fish, game and fur bearing animals was destroyed, the defendants deprived plaintiffs of a great part of the consideration upon which such cessions were made, took away from plaintiffs their chief means of earning an adequate living and reduced them to poverty. . . .

Petition, *Mole Lake Band v. United States*, No. 45, 162, at 37-38 (Defs.' Ex. 3) (emphasis added).

This original petition changed during the *Mole Lake* proceeding, however, the original petition, after the

swamp land and school land causes of action were separated from it, was "still further narrowed by the abandonment of some of the claims not severed out of the petition." 126 Ct. Cl. at 597. Seven claims remained for final adjudication, but the failure to maintain Chippewa hunting and fishing rights was not one of them. *Id.* at 601.[4] With regard to the seven remaining claims, the court determined that, as a matter of law, the plaintiffs and the intervenors were not entitled to recover; accordingly, the Wisconsin Chippewa's petition and the intervening petition of the Minnesota Lake Superior Chippewa bands were dismissed. *Id.* at 631.

B. The *Minnesota Chippewa Tribe* Litigation

The Minnesota Chippewa bands filed their petition before the ICC in January of 1948; that petition was originally assigned Docket Number 18. By an order dated July 13, 1949, the ICC directed that the causes of action in the original Docket 18 petition be separated out according to the particular treaty involved and refiled in separate petitions. *See* United States Indian Claims Commission,

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[4] Those seven claims involved: 1) unpaid balances claimed to be due as consideration for the treaties of August 3, 1795, November 17, 1807, September 24, 1819, July 29, 1829 and March 28, 1836; 2) differences between the value of gold and currency used in making payments; 3) trespasses in the cutting of timber upon plaintiffs' reservations; 4) defendant's use of plaintiffs' funds in the erection of school and agency buildings and for other administrative purposes; 5) failure to let logging contracts to the highest bidders; 6) deduction of costs of scaling and other administrative expenses in logging tribal lands; and 7) failure to employ Native Americans in the logging industry. *Id.* at 597-98.

Final Report, September 30, 1978, at 34 (Pls.' Ex. 3). Claims involving territory ceded under the 1837 Treaty were assigned to ICC Docket Number 18-C; claims involving territory ceded under the 1854 Treaty were assigned to ICC Docket Number 18-U. On August 9, 1949, a consolidated complaint was filed which asserted claims under four treaties, including the 1837 and 1854 Treaties. *Minnesota Chippewa Tribe v. United States*, Compl., No. 18C, at 18-19, 24-26 (Pls.' Ex. 4). On October 23, 1957, the ICC ordered that separate complaints be filed for each docket. The proceedings involved in each docket are described below.

1. The 18-C Docket: The 1837 Treaty

The 18-C Amended Complaint, filed August 5, 1959, alleged that, at the negotiations which resulted in the 1837 Treaty, the United States

> . . . represented to the Indians that they could not withstand the increasing pressure of the whites for possession of their lands and that they must relinquish title. Under duress and upon promise that they would be permitted to continue their use and occupation of the ceded lands the Indians signed the treaty of cession presented to them by the defendant's agents.

Amended Compl., August 5, 1959 ¶ 11 (Pls.' Ex. 5). In their prayer for relief, the Minnesota Chippewa sought: 1) fair and just compensation for the lands ceded by the 1837 Treaty; 2) revision of the 1837 Treaty "so as to award the plaintiffs fair and just compensation or consideration for the lands ceded"; and 3) "an amount which will

provide plaintiffs with fair, just and reasonable compensation for the damages resulting from defendant's failure to deal fairly and honorably with the plaintiffs." *Id.*

In the 18-C docket, the ICC granted the petitioners' motion for summary judgment, concluding that, as a matter of law, Congress "recognized" title in the Chippewa to all of the lands ceded by the 1837 Treaty.[5] 19 Ind. Cl. Comm. 514, 529 (Ind. Cl. Comm. 1968) (Pls.' Ex. 8). The Commission proceeded to determine the acreage and fair market value of the area, and value of the consideration given by the United States for those lands. 26 Ind. Cl. Comm. 22 (Ind. Cl. Comm. 1971) (Pls.' Ex. 9). The ICC determined that timber and agriculture were the two highest and most valuable uses for the ceded lands, which had a fair market value of $9,875,000.00 as of June 15, 1838. *Id.* at 32. The ICC concluded that the total compensation provided for in the treaty, $870,000.00, was so grossly inadequate as to render it unconscionable

[5] A tribe may hold property rights pursuant to "recognized title," *i.e.*, a definite expression of congressional action, such as a statement in a treaty. Tribal property is otherwise held pursuant to "unrecognized title." The law recognizes two forms of unrecognized title. The first, abordinal title, is a permissive right to land use and occupation which the tribe possessed by virtue of long-standing exclusive use and occupation of the lands. The second form of unrecognized title may arise pursuant to executive order or other governmental action that falls short of a clear congressional expression of an intent to recognize a permanent right of occupancy in lands. On the title enjoyed by the Band, the effects of the Treaties, and their impact on usufructuary rights, see *infra* notes 10-12 and accompanying text. *See also Lac Courte Oreilles Band v. Voigt (LCO I)*, 700 F.2d 341, 351-54 (7th Cir.), *cert. denied*, 464 U.S. 805, 104 S. Ct. 53 (1983).

within the meaning of the ICC Act.[6] *Id.* at 33. Finally, the ICC determined that the United States was entitled to offset $847,440.40 in payments on the claim and gratuitous expenditures. 32 Ind. Cl. Comm. 192, 213 (Ind. Cl. Comm. 1973) (Pls.' Ex. 10).

2. The 18-U Docket: The 1854 Treaty

In Docket Number 18-U, the bands amended their complaint twice. *See* Amended Compl., August 5, 1959 (Defs.' Ex. 9) *and* Second Amended Compl., Apr. 29, 1964 (Defs.' Ex. 10). The Second Amended Complaint refers to both the 1837 Treaty and the 1842 Treaty and acknowledges that they ceded land to the United States, but notes that the treaties left "to the Indians the privileges of use and occupancy of the ceded land" until the President of the United States took adverse action. Second Amended Compl., ¶¶ 10(a), (b). The Minnesota Chippewa alleged that "[a]t all times herein material, the defendant had promised to protect the Chippewas in the quiet enjoyment of their lands, but had suffered its citizens and other non-Indians to trespass upon the lands, to take timber and to settle upon said land." *Id.* ¶ 8. They asserted that the consideration paid for the cession made in the 1854 Treaty was "grossly inadequate and unconscionable." The Second Amended Complaint sought: 1) a declaration of the Chippewa's ownership of the area

[6] The ICC determined that three articles of the 1837 Treaty – Articles 2, 3 and 4 – pertained to compensation for the lands ceded. 26 Ind. Cl. Comm. 22, 54 (Ind. Cl. Comm. 1971). The Commission did not discuss or evaluate Article 5 of the treaty, which addressed the Chippewa's usufructuary rights.

ceded by the 1854 Treaty; and 2) fair and just compensation for the cession. *Id.*

In the 18-U docket, the ICC found that, in ratifying various treaties leading up to the 1854 Treaty, Congress had "recognized" title in the Chippewa of the Mississippi and of Lake Superior to the lands ceded by the 1854 Treaty. 14 Ind. Cl. Comm. 360, 367, 374 (Ind. Cl. Comm. 1964) (Pls.' Ex. 11). The ICC further found that the Chippewa of the Mississippi had relinquished all their interest in the area ceded by express language in the 1854 Treaty, so that the Chippewa of Lake Superior (a designation which includes the Fond du Lac Band) were the sole owners of the area ceded. *Id.* at 374. The ICC then determined the fair market value of the area, based upon what a hypothetical "willing and knowledgeable buyer" would have paid at the time of the cession to a similarly situated seller. 25 Ind. Cl. Comm. 55, 56 (Ind. Cl. Comm. 1971) (Pls.' Ex. 12).[7] The ICC next addressed whether any consideration already paid to the petitioners could be charged against any award that the Commission would make.[8] 35 Ind. Cl. Comm. 427 (Ind. Cl. Comm. 1975) (Pls.'

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[7] The ICC considered such factors as "the natural resources of the land, transportation, the available markets, economic conditions, and the highest and best use to which the land could be placed." The Commission found that the highest and best use of the land was for timber and concluded that the fair market value of the ceded lands as of January 10, 1855, was $3,250,000.00, or approximately fifty-five cents per acre. 25 Ind. Cl. Comm. at 81.

[8] The ICC did not consider or attempt to value the hunting and fishing rights set forth in Article XI of the 1854 Treaty as part of the compensation promised in exchange for the lands ceded. The Commission found that the promised consideration

Ex. 13). In the final stage of the litigation on the 18-U docket, the Commission found that the "promised consideration of $813, 353.19 for land having a fair market value of $3,250,000 was so grossly inadequate as to render that consideration unconscionable." 41 Ind. Cl. Comm. 249, 252 (Ind. Cl. Comm. 1978) (Pls.' Ex. 14).

3. The Final Judgments

In 1973, the ICC awarded a judgment of $9,027,559.60 to the Minnesota Chippewa bands "in full satisfaction of all claims in Docket 18-C" arising out of the 1837 Treaty. 32 Ind. Cl. Comm. 192, 213-15 (Defs.' Ex. 7). In 1978, the ICC awarded a judgment of $2,621,174.58 to those bands "in full satisfaction of all claims in Docket 18-U" arising out of the 1854 Treaty. 41 Ind. Cl. Comm. 249, 292-94 (Ind. Cl. Comm. 1978) (Pls.' Ex. 14). The ICC's existence was terminated on September 30, 1978.

Defendants argue that the Fond du Lac Band has previously sought and received compensation for lost usufructuary rights in the territories ceded by the 1837 and 1854 Treaties. Defendants claim that Plaintiffs are barred from relitigating their treaty rights due to the *Mole Lake* litigation brought by the Wisconsin bands of Lake Superior Chippewa in which the Fond du Lac Band intervened. Defendants also contend that the ICC procedures provided the exclusive remedy for claims arising under treaties prior to 1946; having been awarded a judgment, the Band cannot relitigate whether its usufructuary rights

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was set forth in Articles II, IV and V of the Treaty. 41 Ind. Cl. Comm. 249, 267-68 (Ind. Cl. Comm. 1978).

continue to exist under these Treaties. Defendants assert that as a result of the ICC judgments which stated that they rendered a "full satisfaction of all claims," the bands' usufructuary rights claims were "actually litigated" in the ICC process, and their resolution was "essential" to the outcome. Plaintiffs respond that the issue presented here – the continued existence of the Band's claim to off-reservation usufructuary rights – was not presented to the ICC or any other tribunal; Plaintiffs further claim that the issue of their hunting and fishing rights on the ceded land has never been actually litigated or necessarily determined.

III. Collateral Estoppel Standard

Issue preclusion, also called collateral estoppel, protects litigants from the burden of relitigating identical issues, thus promoting judicial economy. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, 99 S. Ct. 645, 649 (1979). Issue preclusion may only be applied if the party against whom it is being asserted had a "full and fair opportunity" to litigate the issue in the prior case. *Lovell v. Mixon*, 719 F.2d 1373, 1376 (8th Cir. 1983).

> Collateral estoppel makes a determination from one proceeding binding in another proceeding if: (1) the issue to be precluded is the same as that involved in the prior litigation; (2) the issue was actually litigated in the prior litigation; (3) the issue was determined by a valid, final judgment; and (4) the determination was essential to the earlier judgment.

Abbott Bank v. Armstrong, 44 F.3d 665, 666 (8th Cir. 1995) (citing *Lovell*, 719 F.2d at 1376). *See also In re Miera*, 926

F.2d 741, 743 (8th Cir. 1991).[9] The burden of proof to establish these elements rests on the party asserting issue preclusion. *Farmland Indus., Inc. v. Morrison Quirk-Grain Corp.*, 987 F.2d 1335, 1339 (8th Cir. 1993) (citations omitted). To determine whether an issue was actually litigated and was necessary to the decision in the prior action, the reviewing court must examine the entire record of the first proceeding. *Miera*, 926 F.2d at 743.

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[9] Amici argue in their brief on Defendants' motion for summary judgment that Defendants' collateral estoppel argument is really based upon principles of res judicata (claim preclusion). Amici Brief on Defenses 9 n.13. Defendants do not refer at all to res judicata in their motion papers; it is clear that the defendants are relying upon *issue* preclusion. To the extent that amici have attempted to propose an alternative basis for summary judgment to this Court, that effort lies outside the scope of participation allowed by Magistrate Judge Erickson's Order, dated June 6, 1994. Magistrate Judge Erickson expressly denied amici's request to participate in this suit as "litigating amicus," noting that other courts have considered such an entity to be a "legal mutant." Order, at 6-7.

In any event, cases and arguments that address the "litigated or could have been litigated" standard for claim preclusion as opposed to the more stringent "actually litigated and necessarily decided" for collateral estoppel do not aid the Court in its analysis. The application of res judicata requires both parties' involvement in the prior litigation, not merely the party being estopped. *See Lane v. Peterson*, 899 F.2d 737, 741-42 (8th Cir.), *cert. denied*, 498 U.S. 823, 111 S. Ct. 84 (1990). The ICC proceedings involved a claim against the United States, not the state officials named in this suit. Defendants have apparently recognized the inapplicability of res judicata here, as they did in the similar litigation described in *Mille Lacs Band v. State of Minnesota*, 853 F. Supp. 1118, 1136 n.5 (D. Minn. 1994) ("The State has abandoned its res judicata defense because the parties here are not identical to those in the ICC proceedings.")

IV. Summary Judgment Standard

Rule 56 of the Federal Rules of Civil Procedure governs motions for summary judgment. Under that Rule:

> [summary] judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). Summary judgment is to be granted only where the evidence is such that no reasonable jury could return a verdict for the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 2511 (1986). Both parties agree that the matter of Defendants' collateral estoppel defense raises issues of law and does not depend on material facts in dispute; it is amenable to summary judgment.

V. Prior Adjudications

A. *Mole Lake*

With respect to the *Mole Lake* litigation, the Court, having reviewed the record in that proceeding, concludes that the issue of usufructuary rights, encompassed in the petitioners' abandoned "natural resource depletion" claim, was not "actually litigated"; the claim having been abandoned, there is no evidence that the petitioners were presented with a "full and fair opportunity" to litigate the issue of usufructuary rights. Only the seven claims listed in footnote 4, *supra*, were actually litigated and

necessarily decided. There is no evidence that a resolution of the usufructuary rights issue was necessary to the final judgment rendered by the Court of Claims in *Mole Lake*. Thus, Defendants have failed to bear their burden of proof as to the elements of collateral estoppel in regard to *Mole Lake*.

B. *Minnesota Chippewa*

With respect to the *Minnesota Chippewa* litigation, the Court concludes that the original Docket 18 petition, upon which Defendants rely, is irrelevant to a determination of the preclusive effect of those proceedings. The original docket and petition were subdivided, and the ICC addressed the claims as presented by the new petitions filed under the individual dockets. Once a pleading has been amended, the old pleading serves no function in the litigation. The question remains whether the existence of the Fond du Lac Band's hunting and fishing rights was ever "actually litigated" or "necessary to the outcome" of the ICC proceedings.

Defendants here have attempted to bootstrap the issue of the existence of the usufructuary rights onto the question of the ICC's valuation of the land at the "highest and best use." Defendants contend that by compensating the Lake Superior Chippewa for the ceded lands according to the highest and best use, *all* uses were necessarily considered and tribal rights pertaining to *all* uses were therefore extinguished. The Court rejects this argument.

The "highest and best use" doctrine is a method for determining the fair market value of the lands ceded,

"find the price at which a hypothetical willing seller would sell and a hypothetical willing buyer would buy, both parties being fully informed and neither being under abnormal pressure." *Yankton Sioux Tribe v. United States*, 623 F.2d 159, 177 (Ct. Cl. 1980). As noted above, at no point in the Docket 18-C or 18-U proceedings did the Commission refer to either the existence or the value of the signatory bands' usufructuary rights in the ceded territories; nor did the United States seek to offset the value of that reserved right against the fair market value of the land. It is clear from the proceedings that the Commission was concerned with the adequacy of the compensation paid for the lands ceded by the 1837 and 1854 Treaties as that compensation compares to the fair market value. The ICC never discussed the usufructuary rights in Articles 5 and 11 of the 1837 and 1954 Treaties, respectively.

Defendants' reliance upon the cases involving the Sioux, or Dakota, and the Black Hills is misplaced. In *United States v. Sioux Nation of Indians*, 448 U.S. 371, 100 S. Ct. 2716 (1980), the United States Supreme Court determined that the Act of February 28, 1877, "effected a taking of tribal property which had been set aside for the exclusive occupation of the Sioux by the Fort Laramie Treaty of 1868." *Oglala Sioux Tribe of Pine Ridge Indian Reservation v. Homestake Min. Co.*, 722 F.2d 1407, 1409 (8th Cir. 1983). The Supreme Court upheld the ICC's award of $105,000,000.00 in compensation for the abrogation of the 1868 treaty. *See id.* The Eighth Circuit subsequently held that the *Sioux Nation* case barred the Oglala Sioux from relitigating whether the 1877 Act had in fact abrogated the Fort Laramie Treaty. *Id.* at 1413-14.

The ICC *award* in the *Sioux Nation* case did not abrogate the Indians' treaty rights; that abrogation had already been effected by the Act of 1877. Thus, in arguing that an award of damages by the ICC extinguishes *all* treaty rights, defendants have misread the *Sioux Nation* cases. The ICC had before it, in the *Minnesota Chippewa* litigation, claims of unconscionable compensation for lands that had been ceded pursuant to treaties purporting to reserve hunting and fishing rights. The *Minnesota Chippewa* proceedings did *not* seek to redress the wholesale congressional abrogation of treaty-recognized title to land. Accordingly, the ICC awards to the Chippewa cannot have the same preclusive effect as was involved in the *Sioux Nation* cases.

Defendants' contention that the ICC must have necessarily considered the rights to hunt and fish on the ceded land to be extinguished misses the mark because usufructuary rights can be and often have been severed from the rights to exclusively own and occupy the land. *Lower Brule Sioux Tribe v. South Dakota*, 711 F.2d 809, 823 (8th Cir. 1983), *cert. denied*, 464 U.S. 1042, 104 S. Ct. 707 (1984); *LCO I*, 700 F.2d at 355-57; *see also Washington v. Washington State Comm'l Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 674-85, 99 S. Ct. 3055, 3068-74 (1979); *cf. Antoine v. Washington*, 420 U.S. 194, 205-07, 95 S. Ct. 944, 950-51 (1975) (legislation ratifying treaty construed to exempt from state regulation tribe's treaty-reserved rights to ceded land).[10] Accepting Defendants' argument

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[10] Defendants asserted at oral argument that Judge Murphy's denial of the collateral estoppel defense in the *Mille Lacs* litigation is flawed because it engages in such an

would mean that the reservation of such usufructuary rights in a treaty, and the guarantee of the United States that those rights would not be infringed, are worth nothing when determining compensation for the taking of those rights. This is an unreasonable construction.

The courts above have therefore held (or, in the case of the Supreme Court, hinted[11]) that usufructuary rights on the ceded land survive cession of the land is a treaty so provides. In *Sokaogon Chippewa Community v. Exxon Corp.*, 2 F.3d 219 (7th Cir. 1993), *cert. denied*, ___ U.S. ___, 114 S. Ct. 1304 (1994), the Seventh Circuit reaffirmed the distinction between usufructuary rights and rights of occupancy it made in *LCO I*, 700 F.2d at 362-65. The court

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"unpacking" of interests in land. Defendants contend that the hunting and fishing rights reserved in the 1837 and 1854 Treaties are remnants of aboriginal title; aboriginal title in turn derives from an interest in land; since the Fond du Lac Band was compensated in full for ceding its interest in the land the reserved hunting and fishing rights must have also disappeared. Yet the cases cited herein recognize that the cession of land did not operate to subsume all other rights specifically recognized by treaty, regardless of their relation to aboriginal rights. *See infra* notes 11-12 and accompanying text; *see also infra* page 36.

[11] In the *Washington Fishing Vessel Association* case, the Supreme Court observed that even the state agreed that the treaties at issue provided the tribe with certain rights, such as the right to cross *private* lands to get to their "ancient fisheries," that non-Native Americans did not enjoy. 443 U.S. at 676 n.22, 99 S. Ct. at 3070 n.22. The tribe had no existing claim under aboriginal title to these "private lands," yet they were allowed to cross them because of a treaty provision reserving the right to take fish from traditional tribal fishing areas. 443 U.S. at 678, 99 S. Ct. at 3071.

also recognized that its earlier decision had held that the same 1854 Treaty at issue here had abrogated only the signatories' rights of *occupancy*. 2F.3d at 223, 225. *Sokaogon Chippewa Community* and other cases recognize the distinction between usufructuary and occupancy rights, and the possibility of treating the two categories of rights separately from one another. *See Western Shoshone Nat'l Council v. Molini*, 951 F.3d 200, 202-03 (9th Cir. 1991), *cert. denied*, 506 U.S. 822, 113 S. Ct. 74 (1992); *cf. Oregon Dept. of Fish & Wildlife v. Klamath Indian Tribe*, 473 U.S. 753, 105 S. Ct. 3420 (1985).[12]

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[12] The *Klamath* decision involved a treaty that was silent with regard to hunting and fishing rights off the reservation; the tribe argued that the historical context demonstrated an intent to preserve tribal hunting and fishing rights in the ceded land. *See* 473 U.S. at 770-71, 105 S. Ct. at 3430. This argument was rejected:

> Indeed, had the parties actually intended to preserve independent hunting and fishing rights for the Tribe on the ceded lands, the Boundary Commission presumably would have computed the value of such rights and explicitly subtracted that amount from the price to be paid for the land so encumbered.

473 U.S. at 773, 105 S. Ct. at 3432.

This comment does not mandate that this Court assume the ICC found the hunting and fishing rights to be extinguished in the *Minnesota Chippewa* litigation, merely because the ICC did not explicitly offset those rights from the award amount. The critical distinction of whether the rights to hunt and fish were reserved in a prior treaty leads to a critical difference in the way the ICC's silence on those rights should be treated. If the rights were reserved in a treaty, the ICC would have had to find that the rights had been extinguished; thus, silence implies no determination as to those rights. If the rights were not reserved, silence would imply that the rights were determined to have

The 1837 and 1854 Treaties expressly reserved hunting and fishing rights to the Lake Superior Chippewa. The Treaties drew a distinction between usufructuary and occupancy rights, making this case fundamentally different from those where tribes ceded their land without any reservation of rights of use. The ICC did not need to find a full and complete extinguishment of treaty rights in the *Minnesota Chippewa* litigation in order to compensate the bands for the cession of the land. The issue of the retained hunting and fishing rights were neither actually litigated nor necessarily decided, and collateral estoppel thus does not apply.

The fact that the ICC was meant to settle tribal land claims with a degree of finality cannot and does not operate to eliminate the requirement of collateral estoppel that the issue must have been actually litigated and necessarily decided.[13] The ICC had jurisdiction to award damages for takings or other wrongs that occurred on or before August 13, 1946. *See United States v. Dann*, 873 F.2d 1189, 1198 (9th Cir.), *cert. denied*, 493 U.S. 890, 110 S. Ct.

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been disposed of by the cession of the land. *Klamath* deals with the latter situation; this case presents the former. The ICC's silence here should not be construed as recognition that *all* of the Band's rights had previously been taken away. *See Mille Lacs Band v. State of Minnesota*, 853 F. Supp. 1118, 1137-38 (D. Minn. 1994).

[13] It is undisputed that the chief purpose of the Indian Claims Commission Act was to dispose of tribal claims with finality. *See United States v. Dann*, 470 U.S. 39, 45, 105 S. Ct. 1058, 1062 (1985). But it is equally apparent, especially from the Act's lack of applicability to claims accruing after August 13, 1946, that Congress did not intend to foreclose all claims by all tribes for all time.

234 (1989) (citing Indian Claims Commission Act, ch. 959, 60 Stat. 1049, 1050 (1946) (as amended Pub. L. 93-494 § 2, 88 Stat. 1499, 1499-1500 (1974)). A claim for the unlawful taking of the tribe's hunting and fishing rights prior to August 13, 1946, was not decided by the Commission. The exclusive jurisdiction conferred by the ICC Act for claims accruing prior to August 13, 1946 did not force any tribe to pursue a claim for rights not yet taken away by the government in order to avoid losing those rights. "[T]he claimant is not subject to a duty either under that act or any other to sue the government at all. In the event of a failure to sue or to prosecute the suit to a decree, rights and liabilities will remain as they were before any act was passed." *Shoshone Tribe v. United States*, 299 U.S. 476, 493, 57 S. Ct. 244, 250 (1937) (discussing earlier act which placed jurisdiction for tribal claims in Court of Claims).

In summary, based on this Court's review of the dockets in the *Mole Lake* and *Minnesota Chippewa* litigation, the Court concludes that Plaintiffs' claims are not collaterally estopped by the prior proceedings. Accordingly, this portion of Defendants' summary judgment motion will be denied, and Plaintiffs' motion to strike this defense will be granted.

1854 Treaty

I. Background

The Court now turns to Plaintiffs' Motion for Partial Summary Judgment seeking a declaration that the Fond du Lac Band reserved and currently enjoys rights to hunt, fish, and gather natural resources from the territory

ceded under the 1854 Treaty. This treaty has not been previously interpreted in the *Mille Lacs* litigation, as the Mille Lacs Band is not a signatory.

The signatory bands to the 1854 Treaty ceded a large portion of land in northeastern and east-central Minnesota, including much of what is popularly known as the Arrowhead region. *See* Treaty of September 30, 1854, 10 Stat. 1109, Art. 1. The Treaty contained the provision that "such of [the tribal members] as reside in the territory hereby ceded, shall have the right to hunt and fish therein, until otherwise ordered by the President." *Id.*, Art. 11.

"As a result of this provision, the Chippewas residing in Minnesota obtained treaty-recognized usufructuary rights on non-reservation lands." *LCO I*, 700 F.2d at 363 (interpreting language of Article 11). The next inquiry must be whether the rights under the Treaty have been withdrawn or vitiated. Defendants concede that, if its four-part summary judgment motion were denied in its entirety, "the Court could properly conclude the Article 11 of the 1854 Treaty was never revoked." Defs.' Mem. in Opp'n to Pls.' Mot. for Partial Summ. J. on Rights Reserved by 1854 Treaty 2. At this point, all four elements in Defendants' previous summary judgment motion have been denied. The fact that this concession was made, however, does not conclusively answer the question.

II. Previous Determinations

Plaintiffs cite two cases which purportedly acknowledge the current validity of these reserved rights. The first is the decision by the Seventh Circuit in litigation

brought by the Lac Courte Oreilles Band of Chippewa in Wisconsin, *LCO I*. The court reviewed, among other issues, the district court's determination that the 1854 Treaty terminated the LCO Band's hunting and fishing rights which were previously reserved by the same 1837 Treaty in this case. The district court had reasoned that "because the 1854 treaty provided permanent homes for the LCO band on specified tracts, it withdrew any conditional right to establish such homes on non-reservation lands in the ceded territory." *Id.* at 362.

The Seventh Circuit disagreed and instead found:

> Nothing in the record compels the conclusion that the LCO band understood the Treaty of 1854 as abrogating their treaty-recognized usufructuary rights. Similarly, nothing compels the conclusion that the Government intended such an extinguishment.

Id. at 364. The court noted that the Minnesota Chippewa, including the Fond du Lac Band, *expressly* reserved their usufructuary rights in the treaty. *Id.*

As Defendants correctly note, the *LCO I* decision did not expressly hold that the 1854 Treaty currently retained its validity. However, the second case cited by Plaintiffs, *United States v. Bresette*, 761 F. Supp. 658 (D. Minn. 1991), does appear to hold that the 1854 Treaty rights have survived into this decade.

In *Bresette*, the United States attempted to prosecute two Chippewa for the sale of feathers in violation of the federal Migratory Bird Treaty Act. The defendants raised the reserved rights under the 1854 Treaty as a defense to

prosecution. In finding for the defendants, the court stated:

> Based on its review of the 1854 treaty and the *Voigt* decisions' factual background regarding the three treaties, the court concludes that the 1854 treaty reserved full usufructuary rights for the Chippewa. . . .

Id. at 661. Reasoning from its determination that the Migratory Bird Treaty Act did not abrogate the 1854 treaty rights, and implicitly assuming that no other act of Congress or the President had taken them away, the court dismissed the prosecution. Defendants here dispute the *Bresette* court's conclusion, arguing that it impermissibly extended the limited finding of an initial reservation of rights in *LCO I* to hold that the signatory bands *currently* enjoy such rights.

Regardless of whether *Bresette* was correctly or incorrectly decided, Defendants have not introduced a viable argument that the rights reserved by the 1854 Treaty have been taken away. Instead of arguing that the rights have been abrogated in some way, Defendants assert that the 1854 Treaty simply guaranteed that Band members could leave their reservation to hunt and fish, subject to the ultimate authority of the state to adopt and enforce "rational, nondiscriminatory regulations." Defs.' Mem. in Opp'n to Pls.' Mot. on 1854 Treaty 7. Defendants base this claim on their assertion that "everyone understood that, off the reservation, the decisionmaking authority would rest with the state government." *Id.* Defendants conclude that Fond du Lac Band members "remain subject to state conservation regulations until they can establish that

those regulations are not appropriately tailored to conservation or public safety ends or somehow discriminate" against them. *Id.* at 8.

III. Standards for State Regulation

As a threshold matter, Defendants' arguments do not go the *existence* of the rights, but rather address the permissible *scope* of state regulation of those rights. The extent to which state regulations apply to Band members off of the reservation is a subject properly reserved until Phase II of this litigation, as was done in the *Mille Lacs* litigation, and as is contemplated by the Order of Magistrate Judge Erickson dated May 11, 1994.[14] *Cf. Mille Lacs*, 861 F. Supp. at 839. Plaintiffs have moved, however, for a declaration as to the scope and nature of the rights reserved by the 1837 and 1854 Treaties, including the standards to be used in Phase II to determine the validity of state regulation of those rights.[15]

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[14] The Order notes that the parties jointly requested, and the Court agreed, to bifurcate the subject matter of the trial: " 'Phase I of the trial would determine whether the alleged Treaty rights continued to exist; and, if necessary, 'Phase II' would determine the extent to which the State could permissibly regulate the Plaintiffs' activities in the exercise of their Treaty rights." *Id.* at 2-3 n.1.

[15] Plaintiffs also claim that they are entitled to an order declaring: 1) that their rights are not limited as to species, varieties, purpose, use, time, place, or manner except to the extent required for conservation, and 2) that the Band and its members may utilize improvements in techniques, methods, devices, and gear. Defendants argue that such issues are properly reserved for the second phase of this litigation, as the first phase was meant only to establish the existence or non-

Defendants' position that the Band and its members are subject to state regulation just as any member of the

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existence of the Band's treaty rights. *See* Defs.' Ex. 12 (letter from Defendants to Magistrate Judge Erickson of June 21, 1993, laying out Defendants' understanding of Phase I/Phase II distinction); Defs.' Ex. 14 (letter from Plaintiffs to Magistrate Judge Erickson of June 29, 1993, laying out Plaintiffs' understanding). The Orders issued by the Magistrate Judge do not speak directly to these disagreements.

In *Mille Lacs*, these issues were decided in Phase I; in the *LCO I/Voigt* litigation, it appears that they were decided in Phase II. In neither case were the issues decided before trial. The Court believes that "[t]here is no reason to postpone consideration of the general nature of the rights to a future trial where the same evidence would have to be presented again." *Mille Lacs*, 861 F. Supp. at 837. Indeed, Defendants have conducted discovery on commercial harvesting. *See, e.g.*, Defs.' Ex. 16, at 60-78 (Dep. of Dr. Charles E. Cleland, Plaintiffs' expert, conducted by Defendants, on issue of whether Fond du Lac Band engaged in commercial activity).

The decision in *Mille Lacs* answers these two issues with regard to the 1837 Treaty. Since the decision collaterally estops Defendants from relitigating those questions, *see infra*, Plaintiffs are entitled to the requested orders with regard to the 1837 Treaty, insofar as they comport with the *Mille Lacs* decision. *See infra* page 41. The *Mille Lacs* court did not consider the general nature and scope of the 1854 Treaty rights, and this Court is not estopped from considering the matter.

A reasonable factfinder could conclude that the scope and nature of the 1837 Treaty rights differ from the scope and nature of the 1854 Treaty rights. Drawing all reasonable inferences in Defendants' favor, there exist genuine issues of material fact with regard to the general nature and scope of the 1854 Treaty rights. The language of the 1837 Treaty – "hunting, fishing, and gathering wild rice" – is broader than the language in the 1854 Treaty – "the right to hunt and fish." Although summary judgment is thus inappropriate for Plaintiffs at this time, the

general public is unsupported by either precedent or the evidence submitted to this Court. Although the Supreme Court in *State ex rel. Kennedy v. Becker*, 241 U.S. 556, 36 S. Ct. 705 (1916), noted that "the sovereignty of the state was well understood, and this conception involved all that was necessarily implied in that sovereignty, whether fully appreciated or not,"[16] the Court found the off-reservation rights of the tribal signatories of the disputed treaty to be subject only to "that necessary power of appropriate regulation." 241 U.S. at 563-64, 36 S. Ct. at 707-08. One must look to more recent Supreme Court precedent to determine what is "appropriate regulation."

Both parties agree that the Band may not hunt and fish off of the reservation with total freedom. The Supreme Court observed as much in *Klamath*: "We have not previously found such absolute freedom from state regulation on nonreservation lands, even in the face of Indian cession agreements that expressly reserved a right to hunt or fish on ceded nonreservation lands." 473 U.S. at 764 n.16, 105 S. Ct. at 3427 n.16. The two disputed issues are: 1) what standards must the state regulation meet in order to be applicable to the Band; and 2) which party bears the burden of proving the regulation is applicable to the Band.

Court does note that substantial judicial authority apparently supports Plaintiffs' position with regard to the scope and nature of the Band's rights, as well as the Band's ability to engage in commercial harvesting. *E.g., Lac Courte Oreilles Band v. Wisconsin*, 653 F. Supp. 1420, 1430 (W.D. Wis. 1987); *Mille Lacs*, 861 F. Supp. at 837-38.

[16] Minnesota did not obtain statehood until 1858, four years after the Treaty was signed. *See* Act of May 11, 1858, 11 Stat. 285.

In *Puyallup Tribe v. Department of Game of Washington*, 391 U.S. 392, 398-401, 88 S. Ct. 1725, 1728-30 (1968), the Supreme Court held that states could regulate treaty-reserved hunting and fishing rights, so long as those regulations were appropriate and necessary for conservation. This rule springs not from the terms of any treaty, but the practical need to ensure that the simultaneous use of those resources by tribal members and non-tribal members does not risk extinction of any species. *See Washington Fishing Vessel Ass'n*, 443 U.S. at 669, 99 S. Ct. at 3066.

Additionally, the *Mille Lacs* court observed that the state "may also regulate the privilege to ensure public health and safety if the regulations do not discriminate against the Indians and are 'reasonable and necessary to prevent or ameliorate a substantial risk to the public health or safety.' " 861 F. Supp. at 838-39 (quoting *Lac Courte Oreilles Band v. Wisconson*, 668 F. Supp. 1233, 1241-42 (W.D. Wis. 1987)). While the Supreme Court has not spoken directly to this issue, it reaffirmed in *Klamath* the proposition that "the off-reservation activities of Indians are generally subject to the prescriptions of a 'nondiscriminatory state law' in the absence of 'express federal law to the contrary.' " 473 U.S. at 765 n.16, 105 S. Ct. at 3427 n.16 (quoting *New Mexico v. Mexcalero Apache Tribe*, 462 U.S. 324, 335 n.18, 103 S. Ct. 2378, 2387 n.18 (1983) (other citations omitted)). Thus, "appropriate regulation" should be defined to include regulation for conservation purposes as well as regulation that will ensure public health and safety.[17]

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[17] Indeed, the Court recognized this proposition in its Memorandum Opinion and Order dated October 8, 1992. The Court denied Plaintiffs' request for a preliminary injunction which would have barred the state from enforcing regulations concerning the taking of big game by Band members on the grounds that allowing Band members to hunt outside of the state's hunting seasons, under the conditions detailed in the Order, would pose a serious risk to public safety. Mem. Op. and Order at 6-9.

Second, contrary to Defendants' argument, it is clearly the *state* that must "demonstrate that its regulation is a reasonable and necessary conservation measure . . . *and* that its application to the Indians is necessary in the interest of conservation." *Antoine v. Washington*, 420 U.S. 194, 207, 95 S. Ct. 944, 952 (1975) (emphasis in original) (citations omitted). Thus, at Phase II of this trial, Defendants will bear the burden of proving that the regulation is appropriate.

In summary, the scope of permissible state regulation is that regulation which is nondiscriminatory and reasonably necessary for conservation and public safety and health purposes, as shown by Defendants. Additionally, the state may not impose its own regulations if the Band can effectively regulate its members so that conversation, [sic] public health and public safety needs are met. *United States v. Michigan*, 653 F.2d 277, 279 (6th Cir. 1981); *Mille Lacs*, 861 F. Supp. at 839; *Lac Courte Oreilles Band v. Wisconsin*, 668 F. Supp. at 1241-42.[18]

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[18] The Fond du Lac Band has promulgated a Ceded Territory Conservation Code, which is directly geared to the area ceded by the 1854 Treaty. *See* Pls.' Ex. 25.

IV. *Crow Tribe v. Repsis*

The Tenth Circuit's recent opinion in *Crow Tribe v. Repsis*, 73 F.3d 982 (10th Cir. 1995), merits discussion in the context of the Treaties' continuing validity. The court held that off-reservation hunting and fishing rights reserved by treaty were repealed when Wyoming was admitted into the union. Relying on *Ward v. Race Horse*, 163 U.S. 504, 16 S. Ct. 1076 (1896), the court found that the act of Congress admitting Wyoming into the union and placing it on an "equal footing" with the original states called into question the provisions of the earlier treaty. 73 F.3d at 990-91. The court proceeded to draw a distinction between those treaties in which the rights possessed by the tribe were considered to be temporary, and those in which the rights were continuing or perpetual.

> [T]he equal-footing doctrine does not prevent the United States from creating a right in a territory which would be binding on the state upon its admission into the Union. However, in order for such a right to be binding on the state, it must be a continuing or perpetual right – a right that is intended at its formation to be continuing against the United States and its grantees, including the state.

Id. at 991. The treaty language found to be "temporary" in *Repsis* reserved to the tribe "the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts." *Id.* at 985-86.

The *Repsis* court distinguishes *United States v. Winans*, 198 U.S. 371, 25 S. Ct. 662 (1905), which upheld a treaty right to take fish at all usual and accustomed places and allowed the tribe to pass over private lands to get to those places, because the treaty right was intended to be a "continuing" one. *Id.* at 991, The *Repsis* court also distinguishes more recent cases, cited *supra*, in which the Supreme Court has recognized the authority of the state to regulate off-reservation rights for conservation purposes, stating that these cases did not apply because the rights had previously been repealed.

Minnesota was admitted into the Union on essentially the same terms as Wyoming, with the same "equal footing" language, and without a reservation of rights in favor of the tribes living in the territory. 11 Stat. 285, Ch. 31, sec. 1 (May 11, 1858); *see also* 11 Stat. 166, ch. 60, sec. 1 (Feb. 26, 1857) (act authorizing formation of state government in Minnesota Territory using same "equal footing" language). Yet the *Repsis* opinion is inapplicable here for several reasons.

First, *Repsis* involved the same treaty language that the Supreme Court had determined was abrogated in *Race Horse*. The district court opinion pointed out that, since *Race Horse* had not been overruled, the Supreme Court's determination controlled later interpretations of the same language. *Crow Tribe v. Repsis*, 866 F. Supp. 520, 524 (D. Wyo. 1994). This Court is faced with no such previous decision. Perhaps more importantly, a distinction must be drawn between the "unoccupied lands of the United States" language in *Repsis*, and the language in the Treaties here. The hunting and fishing rights in the Treaties here are limited to areas ceded, not all of the

unoccupied lands of the United States. Termination of the Treaties here requires an express direction from the federal government; the standard of when "unoccupied" land becomes "occupied" is a vague one, one which could possibly encompass the granting of sovereignty to a newly formed state. Decisions interpreting language similar to that in this case (*e.g., LCO I, Bresette,* and *Mille Lacs*) have found that these rights are sufficiently strong to continue to the present day.

Moreover, this Court has been instructed, more recently than the century-old decision in *Race Horse*, that evidence of clear and plain congressional intent is required to extinguish or abrogate rights reserved in a treaty. *See United States v. Dion*, 476 U.S. 734, 739-40, 106 S. Ct. 2216, 2220 (1986). Absent explicit statutory language, the Supreme Court has been "extremely reluctant" to find congressional abrogation of treaty rights. *Washington Fishing Vessel Ass'n*, 443 U.S. at 690, 99 S. Ct. at 3077 (citing *Menominee Tribe v. United States*, 391 U.S. 404, 88 S. Ct. 1705 (1968)). The repeated incantation of "equal footing" in congressional acts of admission does not clearly indicate a broad congressional intent to strip away any and all tribal rights reserved in pre-statehood treaties. As noted earlier, the language in these Treaties and the treaty in *Repsis* differ markedly. Applying the *Repsis* rationale to the language here would result in precisely the sort of "backhanded" abrogation which has been expressly forbidden by the Supreme Court. *Dion*, 476 U.S. at 739, 106 S. Ct. at 2220 (citing *Menominee Tribe*, 391 U.S. at 412-13, 88 S. Ct. at 1711). The Supreme Court had phrased the showing of a congressional intent necessary to abrogate a treaty in the following words:

> What is essential is clear evidence that Congress actually considered the conflict between its intended action on the one hand and Indian treaty rights on the other, and chose to resolve that conflict by abrogating the treaty.

Dion, 476 U.S. at 739-40, 106 S. Ct. at 2220.

Such "clear evidence" has not been presented to this Court, and thus the Court cannot follow *Repsis* in finding an abrogation of the Treaties at issue here. *See Lower Brule Sioux Tribe v. South Dakota*, 711 F.2d 809, 825-27 (8th Cir. 1983), *cert. denied*, 464 U.S. 1042, 104 S. Ct. 707 (1984)) (without clear intent of Congress, abrogation of treaty rights cannot be found).[19]

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[19] This same principle is fatal to amici's argument that allotment or the land patenting process effected a parcel-by-parcel destruction of the Band's rights. Amici contend that the United States committed a taking on a parcel by parcel basis, "as it sold fee ownership in these lands to settlers, and developers." Amicus Response to Pls.' Cross-Mot. for Summ. J. on 1854 Treaty 3-7. This privatization, the contention goes, represents clear congressional intent to abrogate the 1854 Treaty, or, alternatively, the executive orders proclaiming each land sale are sufficient to satisfy the clause in Article 11 that the rights exist until otherwise ordered by the President. *Id.* at 10. Amici also observe that the National Forest Act of 1891 allowed the President to select certain lands to be reserved from the public domain conveyance process, and thus, 1854 Treaty rights must have been extinguished on such lands pursuant to Article 11. *Id.* at 8-9.

Judge Murphy found that 1837 Treaty rights were not terminated by land patents issued by the government in *Mille Lacs*, and her discussion of *United States v. Winans*, 198 U.S. 371, 25 S. Ct. 662 (1905) is instructive. In *Winans*, the Court held that a treaty which gave the Yakima tribe the right of taking fish at all "usual and accustomed places" survived the private

The issue is whether the act of statehood "is consistent only with an intent to end any special rights of the Tribe outside the reservation." *Klamath*, 473 U.S. at 773 n.23, 105 S. Ct. at 3431 n.23 (citing *Race Horse*). In granting statehood to the territory of Minnesota, the intent of Congress to abrogate treaty-based hunting and fishing rights is far from clear and unambiguous. While *Race Horse* may not be a dead letter, neither it nor its interpretation in *Repsis* controls here.

V. Conclusion

When a moving party makes and supports a motion for summary judgment, the party opposing the motion may not rest upon the allegations or denials of its pleadings; rather, it must "set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 407 U.S. at 256, 106 S. Ct. at 2514. *See also Krenik v. County of Le Sueur*,

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acquisition of land bordering the river in question by grants from the United States or Washington. In doing so, it rejected the argument that the land patenting process destroyed the rights in the treaty:

> The Land Department could grant no exemptions from [the treaty's] provisions. It makes no difference, therefore, that the patents issued by the Department are absolute in form. They are subject to the treaty as to the other laws of the land.

198 U.S. at 382, 25 S. Ct. at 664.

Moreover, in *Swim v. Bergland*, 696 F.2d 712 (9th Cir. 1983), the Ninth Circuit squarely rejected amici's view that the 1891 National Forest Act gave the President the power to extinguish Indian treaty rights in lands designated as national forests. *Id.* at 717.

47 F.3d 953, 957 (8th Cir. 1995). While there exists a genuine dispute as to the scope of these rights, Defendants have not set forth specific facts showing that the *existence* of rights under the 1854 Treaty is in dispute. Partial summary judgment for Plaintiffs is thus appropriate. However, this grant of summary judgment is necessarily limited to the basic existence of 1854 Treaty rights, and does not embrace the proposition that the 1854 Treaty reserves rights to the Fond du Lac Chippewa to hunt, fish, and gather in the ceded area free from state regulation. The appropriate scope of state regulation is to be resolved in Phase II of this litigation. *See also supra* note 15.

Collateral Estoppel Effect of *Mille Lacs*

I. Background

Plaintiffs have moved this court for summary judgment, seeking a declaration that the Fond du Lac Band continues to hold hunting, fishing, and gathering rights under Article 5 of the 1837 Treaty. They rely on Judge Murphy's decision in *Mille Lacs*, which determined that these rights still exist. The *Mille Lacs* decision, it is contended, collaterally estops Defendants from arguing against the continued vitality of the 1837 Treaty rights, and compels this Court to recognize the existence of the rights, their nature, and their scope as determined by Judge Murphy. The issues decided by the *Mille Lacs* court were: "whether the privilege to hunt, fish, and gather wild rice on the 1837 ceded territory continues to exist; whether the privilege extends to private lands; and the general nature of such rights." 861 F. Supp. at 791.

As previously stated, collateral estoppel (issue preclusion) makes a determination from one proceeding binding in another if: 1) the issue to be precluded is the same as that in the prior litigation; 2) the issue was actually litigated in the prior litigation; 3) the issue was determined by a valid and final judgment; and 4) the determination was essential to the previous judgment. *Abbott Bank*, 44 F.3d at 666 (citation omitted). The party asserting collateral estoppel applies bears the burden of proof. *Farmland Indus., Inc.*, 987 F.2d at 1339.

II. Identity of Issues

Defendants argue that the issues are not identical, primarily because the Fond Du Lac Band did not historically hunt, fish, or gather on the ceded lands, and because the 1850 Executive Order of President Taylor extinguished the Band's rights, irrespective of the removal provision. Defendants claim that different signatories to the 1837 Treaty received different rights because the Treaty reserved rights based on the lands they had historically occupied, thus precluding the application of collateral estoppel.

A. Occupancy and Rights under the 1837 Treaty

Treaties usually do not grant rights to their Native American signatories, but instead represent a grant of rights from them to the United States, with a reservation of those rights not granted. *Winans*, 198 U.S. at 381, 25 S. Ct. at 664. Yet, in *Winans* the Supreme Court recognized a right of the Yakima to cross private lands in order to take fish at their "usual and accustomed places." In *LCO I*, the

Seventh Circuit concluded that "treaty-recognized rights of use depend neither on title nor right of permanent occupancy." 700 F.2d at 352. Usufructuary rights recognized in a treaty need not be connected to occupancy under all circumstances. *Id.* at 363. As Judge Devitt observed: "Extinguishment of Indian title eliminates aboriginal hunting, fishing, trapping, and wild ricing rights, but it does not necessarily preclude the possibility that similar rights were granted back to the Band in exchange for the land cessions." *United States v. Minnesota*, 466 F. Supp. 1382, 1386 (D. Minn. 1979), *aff'd*, 614 F.2d 1161 (8th Cir.), *cert. denied*, 449 U.S. 905, 101 S. Ct. 279 (1980) (citing *Winans*).

Here, the privilege of hunting, fishing, and gathering wild rice in the territory ceded, is "guarantied to the Indians" without restriction as to their previous use or occupancy. 1837 Treaty, Art. 5. In the 1854 Treaty, by contrast, usufructuary rights are reserved only to "such as [the Chippewa of Lake Superior] as reside in the territory hereby ceded." 1854 Treaty, Art. 11.

Although the Fond du Lac Band is a signatory to a treaty which gives them usufructuary rights in all ceded land, Defendants suggest that the treaty meant to only give them rights in land to which they could assert aboriginal title. Since the Fond du Lac Band, according to Defendants, never occupied the ceded area, they should not enjoy usufructuary rights.[20] Defendants' approach

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[20] Plaintiffs dispute Defendants' contention and offer evidence that the Band indeed used part of 1837 ceded area before the Treaty was made. *See, e.g.*, Pls.' Ex. 31 (James Duane Doty, "Northern Wisconsin in 1820," VII *Wisconsin Historical*

demands the rewriting of treaty language. If the United States had intended to confine the rights of each band to their historical territory, then the government could have stated that the rights of taking fish and game "at their usual and accustomed places" were reserved to the signatories, just as the treaty at issue in *Winans* did, or language similar to that in the 1854 Treaty could have been used.

A treaty is akin to a contract between two sovereign powers. *Washington Fishing Vessel Ass'n*, 443 U.S. at 675, 99 S. Ct. at 3069. By the terms of the 1837 Treaty, the federal government promised the "Indians," including the Fond du Lac Band, usufructuary rights in the ceded land, regardless of occupancy. *See LCO I*, 700 F.2d at 358. Thus, even if the Band did not make use of or live in this area does not block the collateral estoppel effect of the *Mille Lacs* litigation.

B. The Understanding of the Fond du Lac Band

Amici, and to some extent Defendants, assert that the *Mille Lacs* ruling spoke only to the understanding of the Mille Lacs Band in interpreting the 1837 Treaty. Since the Fond du Lac Band's understanding was not specifically addressed, and was in any event not essential to the judgment in the case, it is contended that the previous litigation can have no binding effect.

The 1837 Treaty was made with the "Chippewa nation." Article V of the Treaty guarantees usufructuary

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Collections), at 201; Pls.' Ex. 33 (Report of Dr. Charles E. Cleland), at 17-18.

rights to the "Indians". The *Mille Lacs* opinion, as well as the *LCO I* opinion on which it relies, is phrased in terms of the "Chippewa's" understanding. The *Mille Lacs* opinion "declared and adjudged that the privilege guaranteed to the Chippewa of hunting, fishing and gathering the wild rice upon the lands, the rivers and the lakes included in the territory ceded to the United States by the treaty of 1837 continues to exist." 861 F. Supp. at 841. As discussed above, the signatories to the 1837 Treaty enjoy equal rights in the ceded land. Thus, this aspect of the *Mille Lacs* opinion is not logically confined to one signatory.

Yet amici and Defendants continue to claim that, in *Mille Lacs*, the holding was and could be based only on the understanding of the Mille Lacs Band. A reading of the opinion and the record indicates that this is not so. In *Mille Lacs*, as here, Defendants' primary argument is that the 1850 Executive Order revokes these rights.[21]

The 1850 Executive Order purports to revoke the usufructuary rights present in the 1837 Treaty, which guarantees them to the signatory bands "at the pleasure of the President." The Executive Order reads:

> The privileges granted temporarily to the Chippewa Indians of the Mississippi, by the fifth article of the treaty made with them on the 29th of July 1837, "of hunting, fishing and gathering

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[21] In *Mille Lacs*, Defendants also argued that the Band's rights under the 1837 Treaty has been extinguished by a treaty entered into in 1855. *See Mille Lacs*, 861 F. Supp. at 830-35. The Fond du Lac Band were not signatories to this treaty, so the issue has not been raised here.

> the wild rice upon the lands, the rivers and the lakes included in the territory ceded" by the treaty to the United States; and the right granted to Chippewa Indians of the Mississippi and Lake Superior, by the Second Article of the treaty with them of October 4th, 1842, of hunting on the territory which they ceded by that treaty, "with the other usual privileges of occupancy until required to remove by the President of the United States," are hereby revoked; and all of the said Indians remaining on the lands ceded as aforesaid, are required to remove to their unceded lands.

Executive Order of Feb. 6, 1850.

In *Mille Lacs*, this order was deemed invalid. Judge Murphy found that no act of Congress, including the ratified 1837 Treaty, gave the President the authority to remove the Chippewa without their consent, and that Congress had previously required tribal consent for removal in the Indian Removal Act of 1830. 861 F.Supp. at 824. Judge Murphy also found that the revocation of usufructuary rights was not severable from the portion of the Order that required removal, so that the entire Order was held invalid. *Id.* at 825-26. She determined, in addition, that the revocation of usufructuary rights was never enforced against any of the Chippewa, and that the executive branch indefinitely suspended and intended to repeal the entire 1850 Order. *Id.* at 829-30.

None of the above determinations hinges on the Mille Lacs Band's, or any band's, understanding of the treaty. The only point in the discussion where the Chippewa understanding comes into play is in the alternative

finding that, even if the removal provision and the extinguishment of rights provisions were severable, the Order violated the government's obligation of good faith toward the Chippewa. *Id.* at 826-27.[22] Defendants may well be correct in claiming that this alternative argument may not be applied against them. Judge Murphy relies on the fact that "[t]he Chippewa repeatedly told [the government negotiator] that they needed to hunt, fish, and gather on the lands to survive." Defendants have produced some evidence that the Fond du Lac Band did not join in this assertion; they claim that the 1837 Treaty's reservation of usufructuary rights must have seemed like a "windfall" to the Band and that the Band was not concerned at all about the ceded land. Defs.' Mem. in Opp'n to Pls.' Mot. for Summ. J. on 1837 treaty 12 (citing Defs.' Ex. 1 (Report of Dr. Paul Driben), at 4); *see also* Defs.' Ex. 1 (Driben Report) at 9 (Fond du Lac Band had no reason to use or occupy lands ceded by 1837 Treaty, and Fond du Lac chief stated he could not speak with authority about territory).

Other than this alternative argument, however, the rationale in the *Mille Lacs* opinion concerning the 1850 order is not specific to the Mille Lacs Band. Although it is disputed whether the removal provision was of any consequence to the Fond du Lac Band, the treatment of the Order's validity does not turn on the areas occupied by

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[22] Judge Murphy did also find that the 1850 Order was never intended to be applied to the Mille Lacs Band in particular. *Id.* at 807-11, 829. Again, this determination was not essential to the finding that the 1850 Order had not revoked the Chippewa's usufructuary rights.

particular bands. The Court, in this context, agrees with Defendants' assertion that "Indian understanding of the 1837 Treaty is irrelevant to determining the validity of the 1850 order." Defs.' Mem. in Supp. of Mot. for Summ. J. Concerning Effect of 1850 Order on 1837 Treaty Usufructuary Rights 12.

As to what the tribal signatories could harvest from the 1837 ceded territory, the manner of the harvest, and restrictions on the right to harvest, the Court has been presented with no evidence demonstrating a need to differentiate between the Mille Lacs Band and the Fond du Lac Band in regard to these questions. *See* 861 F.Supp. at 838. The relevant issues for collateral estoppel purposes are the same, satisfying the first element of the collateral estoppel test.

III. The Other Elements

A. Actually Litigated

The question of the tribal signatories' usufructuary rights under the 1837 Treaty was actually litigated in *Mille Lacs*. Indeed, it was the main issue addressed by Judge Murphy's opinion. Any contention that the rights of the Fond du Lac Band were not actually litigated must be rejected, as the 1837 Treaty does not tie tribal usufructuary rights to the areas the signatories traditionally inhabited and the existence of those rights is not dependent on particular understandings.

B. Valid, Final Judgment

Defendants cannot successfully attack the validity of Judge Murphy's opinion in *Mille Lacs* simply on the basis that they strongly disagree with her conclusions. Defendants do not here contend that judgment was somehow improperly entered on the disputed issues.

Amici do, however, argue that the *Mille Lacs* opinion lacks the requisite finality for it to apply here. After Defendants appealed from the rulings in the opinion, the Eighth Circuit found that they did not constitute final orders, as they resolved only threshold issues. *Mille Lacs Band v. State of Minnesota*, 48 F.3d 373 (8th Cir. 1995). Yet whether an order is "final" for purposes of appeal does not answer the question of whether it is "final" for purposes of collateral estoppel. *John Morrell & Co. v. Local Union 304A*, 913 F.2d 544, 563 (8th Cir. 1990), *cert. denied*, 500 U.S. 905, 111 S.Ct. 1683 (1991). In *Morrell*, the court found that an interlocutory jury verdict on the question of liability, which was not appealable because the issue of damages remained to be tried, nevertheless barred relitigation of the liability question. Judge Friendly was quoted by the court for the proposition that " '[f]inality' in the context [of issue preclusion] may mean little more than that the litigation of a particular issue has reached such a stage that a court sees no really good reason for permitting it to be litigated again." 913 F.2d at 563 (quoting *Lummus Co. v. Commonwealth Oil Refining Co.*, 297 F.2d 80, 89 (2d Cir. 1961), *cert. denied*, 368 U.S. 986, 82 S.Ct. 601 (1962)).

The *Mille Lacs* decision is not tentative or conditional. Abundant evidence was presented on the issue at trial,

and the State of Minnesota and the defendants in *Mille Lacs* had a strong incentive to fully litigate the issue. *See Morrell*, 913 F.2d at 564. The *Mille Lacs* court decided the precise issues before this Court, in a way that did not hinge on a particular band's previous territory or its understanding of the Treaty. It represents a valid and final judgment for these purposes.

C. Essential to the Previous Judgment

The determination of whether the Chippewa currently hold rights under 1837 Treaty was certainly necessary to the *Mille Lacs* ruling, as was the determination of the nature and scope of those rights. A ruling of these issues was and is essential to the subsequent phase of the *Mille Lacs* litigation, which is designed to address the appropriate level of state regulation (similar to Phase II of this litigation). It is true that the Fond du Lac Band's understanding of the Treaty was not essential to the judgment in *Mille Lacs*. Nor is it here. Even if the Fond du Lac Band believed is rights in the ceded territory could be terminated by the President for whatever reason, the *Mille Lacs* opinion holds, without reliance on issues of signatory understanding, that the signatories' rights were not properly terminated by the 1850 Order or any other executive or congressional action.

IV. Other Considerations

Amici, and to some extent Defendants, advance other reasons as to why collateral estoppel should not be applied here. They will be dealt with in turn.

A. Inconsistent Prior Judgments

Defendants argue that prior cases, in contrast to *Mille Lacs* and *LCO I*, have found the 1850 Order to be valid. In cases where a plaintiff seeks to take advantage of a prior judgment (offensive collateral estoppel), collateral estoppel should not be applied when there are inconsistent prior judgments. *Aetna Casualty & Sur. Co. v. General Dynamics Corp.*, 968 F.2d 707, 711 (8th Cir. 1992) (paraphrasing *Setter v. A.H. Robins Co.*, 748 F.2d 1328 (8th Cir. 1984)).

The first case advanced is *State v. Keezer*, 292 N.W.2u 714 (Minn. 1980), *cert. denied*, 450 U.S. 930, 101 S.Ct. 1389 (1981), in which the Minnesota Supreme Court upheld the conviction of two Chippewa for harvesting wild rice without a license. The area in which they were harvesting was outside of the lands ceded by the 1837 Treaty, so that they could not claim that the benefit of the Treaty. *Id.* at 721. The court then stated: "Furthermore, this right was expressly revoked by Order of President Zachary Taylor in 1850." *Id.* The court did to discuss the matter aside from this sentence. The lone statement was in no sense necessary to the judgment, being that the activity did not take place on territory ceded by the 1837 Treaty. It is properly considered dicta, not an "inconsistent prior judgment," and does not preclude the operation of collateral estoppel.

Red Lake Band v. Minnesota, 614 F.2d 1161 (8th Cir.), *cert. denied*, 449 U.S. 905, 101 S.Ct. 279 (1980), also does not bar collateral estoppel here. That case held that the Red Lake Band of Chippewa conveyed "all our rights, title, and interest in and to all" that lands in question to

the federal government in 1889 and 1904, and could not thereafter exercise hunting and fishing rights. It does not speak to the issues here.

In *Mole Lake Band v. United States*, 139 F.Supp. 938 (Ct. Cl. 1956), the court did not address the validity of the 1850 Order, but simply recounted it in its statement of facts. *See LCO I*, 700 F.2d at 360. This Court has already determined that the *Mole Lake* claim does not collaterally estop the Band from bringing this claim.

Finally, in *Le Mieux v. Agate Land Co.*, 214 N.W. 454 (Wis., *cert. denied*, 275 U.S. 523, 48 S.Ct. 22 (1927), plaintiffs claimed that they retained a right of occupancy in land ceded by a treaty in 1842, and had exercised it; thus, only they could have title. The treaty at issue was similar to the 1837 Treaty here: it allowed the Chippewa signatories not only the right of hunting but the right of occupancy on the ceded territory, until required to remove by the President. *See LCO I*, 700 F.2d at 345. The Wisconsin Supreme Court found that the 1850 Order terminated the right of occupancy in the ceded land "so far as it would interfere with the lawful occupancy of those claiming by patent from the United States." 214 N.W. at 459. In distinguishing its result from two earlier United States Supreme Court cases[23] which found the rights in the ceded territory had not been terminated because the Chippewa had not been removed, it concluded that the earlier decisions must have overlooked the 1850 Order. *Id.* Yet the court stated: "We find no grounds upon which

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[23] The cases are *United States v. Thomas*, 151 U.S. 577, 14 S.Ct. 426 (1894) and *United States v. J.S. Stearns Lumber Co.*, 245 U.S. 436, 38 S.Ct. 137 (1918).

the validity of such a document or its competency as evidence can properly here be questioned." *Id.* Such grounds, however, have been shown to exist in *Mille Lacs*. Just as the *LeMieux* court declined to follow *Thomas* and *Stearns Lumber* because they apparently did not consider the 1850 Order, *LeMieux* does not bar collateral estoppel here because it did not fully consider the issue of the Order's validity.

Moreover, forty-five years later, the Wisconsin Supreme Court decided *State v. Gunroe*, 192 N.W.2d 892 (Wis. 1972), concluded that the 1850 Order "did *not* result in an actual revocation of fishing rights" guaranteed by the 1837 and 1842 Treaties. *Id.* at 900 (emphasis added). Indeed, the *LCO I* court considered using *Gunroe* to collaterally estop *defendants*, including the state of Wisconsin, from arguing that the 1850 Order was *valid*, but concluded that it had no such effect, as the validity of the Order was not "in issue" in the case. 700 F.2d at 360-61. The *Gunroe* court did state, however, that the Order did not revoke the fishing rights "because it was never effective," thus vitiating the impact of *LeMieux*, 192 N.W.2d at 900.

Thus, no decision above rises to the level of a "prior inconsistent judgment" sufficient to bar the application of collateral estoppel here.

B. Fundamental Fairness

The Supreme Court has directed that offensive collateral estoppel should not be allowed in situations where its application would be unfair to the defendant. *Parkland*

Hosiery Co. v. Shore, 439 U.S. 322, 330-31, 99 S.Ct. 645, 651 (1979). The *Parklane* Court noted several situations in which unfairness to a defendant may arise: if the defendant had little incentive to defend the prior litigation vigorously; if it is inconsistent with previous judgments; or if the second action would give the defendant additional procedural opportunities. *Id.*

Defendants and Defendants' counsel obviously had and have a great incentive to litigate in the *Mille Lacs* action. Plaintiffs' claims were also quite foreseeable, as a separate signatory of the 1837 Treaty. This action gives Defendants no additional procedural defenses or opportunities not available in *Mille Lacs*-amici's argument that Judge Murphy's conclusions were so erroneous as to be procedurally unfair misses the mark. As an example of such "unfairness," the *Parklane* Court suggested a situation in which the defendant in the first action was forced to defend in an inconvenient forum, and was unable to engage in full-scale discovery or call witnesses. 439 U.S. at 331 n.15, 99 S.Ct. at 651 n.15. Such is definitely not the case here.

Amici contend that Plaintiffs had an opportunity to join the *Mille Lacs* lawsuit yet did not do so. The application of offensive collateral estoppel allows a potential plaintiff to rely on a previous judgment against a defendant, but may at the same time allow the potential plaintiff to avoid the binding effect of a judgment for the defendant. *See Parklane*, 439 U.S. at 330, 99 S.Ct. at 651. This practice does not serve the purposes of judicial economy.

This case was filed in September 1992, after the Band issued big game hunting regulations, in the area ceded by the 1854 Treaty, at odds with state regulation; the *Mille Lacs* litigaton was pending at this time. This lawsuit addresses the 1854 Treaty, which is not an issue in the *Mille Lacs* litigation.

Defendants also had an opportunity to seek consolidation of the 1837 Treaty questions in the cases but chose not to do so – both cases were filed in the same district, the possibility of collateral estoppel must have been evident when this suit was filed, and Defendants had a fair opportunity to litigate in the *Mille Lacs* litigation. Such a failure to move to consolidate has been held to "dissipate" the force of an argument based on *Parklane* considerations of fairness. *W.J. Roberts & Co. v. S.S. Hellenic Glory*, 471 F.Supp. 1002, 1003 (S.D.N.Y. 1979) (defendant's failure to joint potential plaintiffs when it knew other actions would follow did not bar use of collateral estoppel against it).

Thus, such considerations do not bar application of collateral estoppel.

C. Availability of Collateral Estoppel Against State Officials

Defendants contend that non-mutual collateral estoppel should not be available against state officials such as themselves. In *United States v. Mendoza*, 464 U.S. 154, 104 S.Ct. 568 (1984), the Supreme Court held that the doctrine of nonmutual offensive collateral estoppel (the type at issue here) should generally not be applied against the

federal government.[24] The rationale for doing so was that the federal government is not a normal private litigant; its cases involve legal questions of substantial and nationwide public importance, and implicate a broader range of concerns (*e.g.*, the preservation of government and judicial resources in deciding not to appeal certain decisions) than other litigants. 464 U.S. at 160-62, 104 S.Ct. at 572-73. Defendants claim that the same rationale should apply to the state government, and then should also apply to Defendant officials here.

Plaintiffs dispute the propriety of importing the *Mendoza* rationale to this case. They are supported by the decision of the Eighth Circuit here affirming this Court's denial of qualified immunity, and finding that this case sought to vindicate important federal rights by suing state officials for prospective injunctive relief under *Ex parte Young*, 209 U.S 123, 28 S.Ct. 441 (1908). *Fond du Lac Band v. Carlson*, 68 F.3d 253, 255 8th Cir. (1995). Allowing state officials to avoid the preclusive effect of prior judgments in suits brought under *Ex parte Young* would cripple that doctrine's purpose of ensuring that state officials comply with federal law. *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, ___, 113 S.Ct. 684, 688 (1993).

Moreover, the *Mendoza* considerations do not apply here. Defendant officials do not face litigation on a "nationwide" basis. Applying collateral estoppel would not negatively impact the officials' decision of which

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[24] As the Seventh Circuit has noted, the opinion in *Mendoza* is not without some ambiguity. *Adkins v. Commissioner of Internal Revenue*, 875 F.2d 137, 141 (7th Cir. 1989).

cases to appeal. The application of collateral estoppel here also does not affect the Supreme Court's practice of reviewing cases when federal circuit courts of appeals decide issues differently, a concern expressed in *Mendoza*. Even if the state were the real party in interest, it has had a full opportunity to consider, and reject, the administrative concerns that weigh against initiation of the appellate process. Several courts have affirmed the use of offensive nonmutual collateral estoppel against state officials or the state itself, or even the federal government, if the *Mendoza* considerations do not apply; the Eleventh Circuit would apply *Mendoza* to state governments in at least some situations. *See Benjamin v. Coughlin*, 905 F.2d 571, 576 2d Cir. (1990) (affirming application of nonmutual offensive collateral estoppel against state officials where state courts had decided issue during pendency of federal case and state agency had opportunity to consider appeal); *Milton S. Kronheim & Co. v. District of Columbia*, 877 F.Supp. 21, 26-27 (D.D.C. 1995) (applying nonmutual offensive collateral estoppel against the District of Columbia, holding *Mendoza* did not apply to D.C. government); *State v. United Cook Inlet Drift Ass'n*, 895 P.2d 947, 951-53 (Alaska 1995) (*Mendoza* does not bar nonmutual offensive collateral estoppel against state government);[25] *see also Colorado Springs Production Credit Ass'n v. Farm*

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[25] The court recognized an exception, forbidding nonmutual offensive collateral estoppel against the state government when "unmixed questions of law" were involved, but only when the two litigations involved "unrelated subject matter." *See id.* at 952, 954. Here, of course, the subject matter of this case and that of the *Mille Lacs* litigation are the same with respect to the 1837 Treaty.

Credit Admin., 666 F.Supp. 1475, 1477-78 (D. Colo. 1987), *appeal dismissed*, 848 F.2d 200 (10th Cir. 1988) (*Mendoza* did not posit absolute rule against use of nonmutual offensive collateral estopell, even against federal government; *Mendoza* applies only in situations where federal policy considerations are affected); *but see Hercules Carriers, Inc. v. Claimant State of Fla.*, 768 F.2d 1558, 1578-80 (11th Cir. 1985) (*Mendoza* rationale applies equally to state governments, especially when dealing with competing decisions of separate state agencies).

Finally, the Court cannot ignore the Eighth Circuit's ruling in *White Earth Band v. Alexander*, 683 F.2d 1129, 1133-35 (8th Cir. 1982), although it predates *Mendoza*. In that case, the court affirmed the application of offensive nonmutual collateral estoppel against state officials (as well as several counties and individual intervenors) in a situation where a state court had earlier ruled that a reservation had not been disestablished. The court noted that the previous state adjudication dealt with the same historical and factual setting, and that "prevention of inconsistent adjudication becomes desirable insofar as it fosters reliance on judicial decision making." *Id.* at 1135 This Court is facing the same issues as the *Mille Lacs* court. Given the above precedent, collateral estoppel is appropriately applied against Defendants here, and Plaintiffs have borne their burden of showing it should indeed apply.

Landowners' Motions to Intervene

The Court now turns to the motions of Robert J. Edmonds and Michael Sheff (collectively, "Landowners")

to intervene as Defendants in this action, both permissively and as of right pursuant to Federal Rule of Civil Procedure 24.[26] They aver that their property is located within the boundaries of the territories ceded by the 1837 and 1854 Treaties. They have previously attempted to intervene in this litigation.[27].

This Court rejected the prior attempt in an Order dated January 9, 1995. In that Order, the Court noted that a party seeking to intervene as of right pursuant to Rule

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[26] Intervention as of right is governed by Rule 24(a):

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The similar standards for permissive intervention are laid out in rule 24(b):

> Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

[27] Defendants notified the Court by letter, dated December 28, 1994, that they neither supported nor opposed the first attempt to intervene.

24(a) must file a timely application *and* "satisfy a tripartite test: (1) the part must have a recognizable interest in the subject matter of the litigation; (2) that interest must be one that might be impaired by the disposition of the litigation; and (3) the interest must not be adequately protected by the existing parties." Order of Jan. 9, 1995, at 4 (quoting *Mille Lacs Band v. Sate of Minnesota*, 989 F.2d 994, 997 (8th Cir. 1993)). Although the intervenors were deemed to have satisfied the three-part test, their attempt to intervene was considered untimely. The Court found that the litigation had progressed to such an extent that granting the movants' application would greatly prejudice the parties. *Id.* at 6. Landowners' motion for permissive intervention was denied on similar grounds. *Id.* at 7.

Landowners' second attempt to intervene emphasizes four differences from the first motion. First, the matter was stayed during the appeal of this Court's rejection of Defendants' qualified immunity defense;[28] the trial date has been pushed back to July 9, 1996. Second, they have promised to waive their demand for a jury trial if allowed to intervene. Third, they claim to have eliminated some affirmative defenses from their proposed Answer. Finally, if the Court believes that intervention is still too prejudicial, they have alternatively proposed that they adopt the Answer of the State of Minnesota and litigate only those defenses being pursued by the State.

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[28] Landowners moved this Court to lift the stay as to their motion to intervene on March 13, 1995; this motion was denied in an Order filed April 3, 1995. After the Eighth Circuit's affirmance of the denial of the qualified immunity defense, the case was returned to this Court in early November 1995.

Landowners partially base their motion on the Eighth Circuit's reversal of Judge Murphy's decision denying a similar motion to intervene by affected landowners in the *Mille Lacs* litigation. *See* 989 F.2d 994. In finding that motion to intervene in that case was timely, the Eighth Circuit emphasized two factors. First, the underlying litigation had barely progressed beyond the filing of pleadings at the time the motion was filed, and second, the parties had not even commenced discovery. *Id.* at 999.

Here, of course, the situation is different. These motions to intervene were filed *after* the date by which all dispositive motions had to be filed, noticed and heard. They were filed *after* all discovery had been closed and all expert reports and depositions had been completed. While the *Mille Lacs* litigation had barely commenced when that intervention motion was filed, *all* of the extensive pre-trial procedures necessary for Phase I had been completed by the filing date of the present motions.[29]

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[29] Ignorance of the scope of a lawsuit as an explanation for a delayed motion to intervene is not favored. The movants for intervention in *Mille Lacs* claimed that they did not know that the 1837 Treaty rights might extend to private lands until March 1992. The Eighth Circuit stated that both the State's Answer and a scheduling order filed on April 9, 1991, made clear that privately owned lands might be affected, and called the proffered explanation for the delay "not very persuasive." 989 F.2d at 999. Here, in their supplemental affidavits, Landowners similarly state that they were under the impression that only the ceded territory under the 1854 Treaty was at issue; however, the initial Complaint in this case clearly requested a declaration of rights under the same 1837 Treaty at issue in *Mille Lacs*. *See* Compl. at 12.

Landowners' "concessions" would in any case do little to mitigate the prejudice which the parties would suffer were intervention to be granted. Notwithstanding the fact that the trial date has been delayed, and even absent a demand for a jury trial, the Revised Proposed Answer attached to Landowners' motion still raises a number of additional issues not addressed by the parties. Even if Landowners agree to only pursue defenses already litigated by the State of Minnesota, albeit more extensively, great prejudice would accrue to Plaintiffs, and the ultimate resolution of this matter would be substantially delayed. Again, the discovery period had terminated when this motion was filed, and the parties had fully briefed and litigated their dispositive motions.

Accordingly, Landowners' motions will be denied as untimely.

Subsequent Proceedings

Based on the foregoing, Plaintiffs' motion for partial summary judgment concerning the 1837 Treaty, based on the *Mille Lacs* litigation, should be granted. The separate summary judgment motions surrounding the 1850 Order are mooted, and will be denied. The nature and scope of the rights in the 1837 Treaty in the *Mille Lacs* opinion will be applied to this action.

However, the parties still dispute the scope and nature of the 1854 Treaty rights. The *Mille Lacs* decision did not speak to this issue. Plaintiffs have moved for a declaration of the nature and extent of the 1854 Treaty rights; Defendants oppose the motion. It is conceivable that the nature and general scope of the rights in the 1837

Treaty (which are set out by the *Mille Lacs* court) differ from the nature and scope of the rights in the 1854 Treaty. The parties should have an opportunity to address this issue in the light of this ruling. Thus, that portion of Plaintiffs' motion requesting definition of the nature and scope of the Band's rights under the 1854 Treaty will be denied without prejudice. *See infra* note 15.

To discuss this issue, as well as scheduling matters and other issues which the parties deem relevant, a status conference will be held before the undersigned in St. Paul on April 15, 1996, at 2:00 p.m.

Conclusion

Accordingly, based on the foregoing, and all of the records, files, and proceedings herein, **IT IS ORDERED** that:

1) Defendants' motion for summary judgment based on collateral estoppel based on previous litigation before the Court of Claims and the ICC (Doc. No. 36) is **DENIED** and Plaintiffs' motion to strike that defense (Doc. No. 58) is **GRANTED;**

2) Plaintiffs' Motion for Partial Summary Judgment on Rights Reserved by 1854 Treaty (Doc. No. 65) is **GRANTED.**

3) Plaintiffs' Motion for Summary Judgment on Rights Reserved by the Treaty of July 29, 1837 (Doc. No. 89) is **GRANTED;**

4) Defendants' Motion Concerning the Effect of the 1850 Executive Order on 1837 Treaty Usufructuary Rights (Doc. No. 107) is **DENIED AS MOOT;**

5) Plaintiffs' Motion for Summary Judgment Striking Defendants' 1850 Order Defense and Defining the Nature and Scope of Plaintiffs' Rights Under the 1837 and 1854 Treaties (Doc. No. 104), is disposed of as follows:

a) that portion of the Motion seeking to strike Defendants' 1850 Order defense is **DENIED AS MOOT;**

b) that portion of the Motion seeking a definition of the nature and scope of Plaintiffs' rights under the 1837 Treaty is **GRANTED** insofar as it comports with the decision in the *Mille Lacs* litigation;

c) that portion of the Motion seeking a definition of the nature and scope of Plaintiffs' rights under the 1854 Treaty is **DENIED WITHOUT PREJUDICE;** and

d) that portion of the Motion seeking a definition of the standards to be used in determining the appropriateness of state regulation of the rights under the Treaties is **GRANTED** insofar as it comports with the reasoning laid out in this Memorandum Opinion and Order, and **DENIED** in all other respects; and

6) Landowners' Second Motion to Intervene (Doc. No. 141) is **DENIED.**

IT IS FURTHER ORDERED that a status conference will be held before the undersigned in St. Paul on Monday, April 15, 1996, at 2:00 p.m. The parties are directed to meet and confer with respect to an agreed-upon agenda for the status conference, and notify the Court by April 2, 1996, of those matters on which there is agreement and

those on which there is not. Trial will commence on July 9, 1996, in Duluth.

March 18, 1996

/s/ Richard H. Kyle
RICHARD H. KYLE
United States
District Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 97-1757/1764/1768/1770/1771/
1772/1774/1937/1938MNST

Mille Lacs Band of Chippewa Indians, et al., Appellees, v. County of Aitkin, et al., Appellants.	* * * * * * * * * *	Appeal from the United States District Court for the District of Minnesota

ORDER

The suggestions for rehearing en banc are denied. Judge Wollman and Judge Loken would grant the suggestions.

The petitions for rehearing by the panel are also denied.

The mandate shall issued forthwith.

Judge Murphy took no part in the consideration or decision of this case.

November 17, 1997

Order Entered at the Direction of the Court:
/s/ Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit

U.S. Const., Art. I, Sec. 8, Cl. 3

Congress shall have the power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes

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U.S. Const., Art. VI, Cl. 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const., Amend. X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

TREATY WITH THE CHIPPEWA. 1837.

Articles of a treaty made and concluded at St. Peters (the confluence of the St. Peters and Mississippi rivers) in the Territory of Wisconsin, between the United States of America, by their commissioner, Henry Dodge, Governor of said Territory, and the Chippewa nation of Indians, by their chiefs and headmen.

ARTICLE 1. The said Chippewa nation cede to the United States all that tract of country included within the following boundaries:

Beginning at the junction of the Crow Wing and Mississippi rivers, between twenty and thirty miles above where the Mississippi is crossed by the forty-sixth parallel of north latitude, and running thence to the north point of Lake St. Croix, one of the sources of the St. Croix river: thence to and along the dividing ridge between the waters of Lake Superior and those of the Mississippi, to the sources of the Ocha-sua-sepe a tributary of the Chippewa river: thence to a point on the Chippewa river, twenty miles below the outlet of Lake De Flambeau; thence to the junction of the Wisconsin and Pelican rivers; thence on an east course twenty-five miles: thence southerly, on a course parallel with that of the Wisconsin river, to the line dividing the territories of the Chippewas and Menomonies: thence to the Plover Portage: thence along the southern boundary of the Chippewa country, to the commencement of the boundary line dividing it from that of the Sioux, half a days march below the falls on the Chippewa river; thence with said boundary line to the mouth of Wah-tap river, at its junction with the Mississippi; and thence up the Mississippi to the place of beginning.

ARTICLE 2. In consideration of the cession aforesaid, the United States agree to make to the Chippewa nation, annually, for the term of twenty years, from the date of the ratification of this treaty, the following payments.

1. Nine thousand five hundred dollars, to be paid in money.

2. Nineteen thousand dollars, to be delivered in goods.

3. Three thousand dollars for establishing three blacksmiths shops, supporting the blacksmiths, and furnishing them with iron and steel.

4. One thousand dollars for farmers, and for supplying them and the Indians with implements of labor, with grain or seed; and whatever else may be necessary to enable them to carry on their agricultural pursuits.

5. Two thousand dollars in provisions.

6. Five hundred dollars in tobacco.

The provisions and tobacco to be delivered at the same time with the goods, and the money to be paid; which time or times, as well as the place or places where they are to be delivered, shall be fixed upon under the direction of the president of the United States.

The blacksmiths shops to be placed at such points in the Chippewa country as shall be designated by the Superintendent of Indian Affairs, or under his direction.

If at the expiration of one or more years the Indians should prefer to receive goods, instead of the nine thousand dollars agreed to be paid to them in money, they

shall be at liberty to do so. Or, should they conclude to appropriate a portion of that annuity to the establishment and support of a school or schools among them, this shall be granted them.

ARTICLE 3. The sum of one hundred thousand dollars shall be paid by the United States, to the half-breeds of the Chippewa nation, under the direction of the President. It is the wish of the Indians that their two sub-agents Daniel P. Bushnell, and Miles M. Vineyard, superintend the distribution of this money among their half-breed relations.

ARTICLE 4. The sum of seventy thousand dollars shall be applied to the payment, by the United States, of certain claims against the Indians; of which amount twenty-eight thousand dollars shall, at their request, be paid to William A. Aitkin, twenty-five thousand to Lyman M. Warren, and the balance applied to the liquidation of other just demands against them – which they acknowledge to be the case with regard to that presented by Hercules L. Dousman, for the sum of five thousand dollars; and they request that it be paid.

ARTICLE 5. The privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guarantied to the Indians, during the pleasure of the President of the United States.

ARTICLE 6. This treaty shall be obligatory from and after its ratification by the President and Senate of the United States.

Done at St. Peters in the Territory of Wisconsin the twenty-ninth day of July eighteen hundred and thirty-seven.

Henry Dodge, Commissioner.

From Leech lake:

Aish-ke-bo-ge-kosbe, or Flat Mouth, R-che-o-san-ya, or the Elder Brother.

Chiefs.

Pe-she-kins, the Young Buffalo, Ma-ghe-ga-bo, or La Trappe, O-Be-gwa-dana, the Chief of the Earth, Wa-boee, or the Rabbit, Che-a-na-quod, or the Big Cloud.

Warriors.

From Gull lake and Swan river:

Pa-goo-na-kee-shig, or the Hole in the Day, Songa-ko-mig, or the Strong Ground.

Chiefs.

Wa-boo-jig, or the White Fisher, Ma-cou-da, or the Bear's Heart.

Warriors.

From St. Croix river:

Pe-she-ke, or the Buffalo, Ka-be-ma-be, or the Wet Month.

Chiefs.

Pa-ga-we-we-wetung, Coming Home Hollowing, Ya-banse, or the Young Buck, Kis-ke-ta-wak, or the Cut Ear.

Warriors.

From Lake Courteoville:

Pa-qua-a-mo, or the Wood Pecker.

Chief.

From Lac De Flambeau:

Pish-ka-ga-ghe, or the White Crow. Na-wa-ge-wa, or the Knee, O-ge-ina-ga, or the Dandy, Pa-se-quam-jis, or the Commissioner. Wa-be-ne-me, or the White Thunder.

Chiefs.

From La Pointe, (on Lake Superior):

Pe-zhe-ke, or the Buffalo. Ta-qua-ga-na, or Two Lodgers Meeting, Cha-che-que-o.

Chiefs.

From Mille Lac:

Wa-shask-ko-kone, or Rats Liver, Wen-ghe-ge-she-guk, or the First Day.

Chiefs.

Ada-we-ge-shik, or Both Ends of the Sky, Ka-ka-quap, or the Sparrow.

Warriors.

From Sandy Lake:

Ka-nan-da-wa-win-zo, or Le Brocheaux. We-we-shan-shis, the Bad Boy, or Big Mouth,

Ke-che-wa-me-te-go, or the Big Frenchman.

Chiefs.

Signed in presence of –

Verplanck Van Antwerp, Secretary to the Commissioner.

M. M. Vineyard, U.S. Sub-Indian Agent. Daniel P. Bushnell. Law. Taliaferro, Indian Agent at St. Peters. Martin Scott. Captain, Fifth Regiment Infantry. J. Emerson, Assistant Surgeon, U.S. Army. H.H. Sibley.

(To the Indian names are subjoined a mark and seal.)

Na-ta-me-ga-bo, the Man that stands First. Sa-ga-ta-gun, or spunk.

Warriors.

From Snake River:

Naudin, or the Wind. Sha-go-bat, or the Little Six. Pay-ajik, or the Lone Man. Na-qua-na-bie, or the Feather.

Chiefs.

Ha-tau-wa, Wa-nie-te-go-zhins, the Little Frenchman, Sho-ne-a, or Silver.

Warriors.

From Fond du Lac (on Lake Superior):

Mang-go-sit, or the Loons Foot, Shing-go-be, or the Spruce.

Chiefs.

From Red Cedar Lake:

Mont-so-mo, or the Murdering Yell. From Red Lake:

Francois Goumean (a half Breed).

From Leech lake:

Sha-wa-ghe-zhig, or the Sounding Sky, Wa-zau-ko-ni-a, or Yellow Robe.

Warriors.

H. L. Dousman.
S. C. Stambaugh.
E. Lockwood.
Lyman M. Warren.
J. N. Nicollet.
Harmen Van Antwerp.
Wm. H. Forbes.
Jean Baptiste Dubay, Interpreter.
Peter Quinn, Interpreter.
S. Campbell, U. S. Interpreter.
Stephen Bonga, Interpreter.
Wm. W Coriell.

TREATY WITH THE CHIPPEWA, 1854.

Articles of a treaty made and concluded at La Pointe, in the State of Wisconsin, between Henry C. Gilbert and David B. Herriman, commissioners on the part of the United States, and the Chippewa Indians of Lake Superior and the Mississippi, by their chiefs and head-men.

ARTICLE 1. The Chippewas of Lake Superior hereby cede to the United States all the lands heretofore owned by them in common with the Chippewas of the Mississippi, lying east of the following boundary-line, to wit: Beginning at a point, where the east branch of Snake River crosses the southern boundary-line of the Chippewa country, running thence up the said branch to its source, thence nearly north, in a straight line, to the mouth of East Savannah River, thence up the St. Louis River to the mouth of East Swan River, thence up the East Swan River to its source, thence in a straight line to the most westerly bend of Vermillion River, and thence down the Vermillion River to its mouth.

The Chippewas of the Mississippi hereby assent and agree to the foregoing cession, and consent that the whole amount of the consideration money for the country ceded above, shall be paid to the Chippewas of Lake Superior, and in consideration thereof the Chippewas of Lake Superior hereby relinquish to the Chippewas of the Mississippi, all their interest in and claim to the lands heretofore owned by them in common, lying west of the above boundary-line.

ARTICLE 2. The United States agree to set apart and withhold from sale, for the use of the Chippewas of Lake Superior, the following-described tracts of land, viz:

1st. For the L'Anse and Vieux De Sert bands, all the unsold lands in the following townships in the State of Michigan: Township fifty-one north range thirty-three west; township fifty-one north range thirty-two west; the east half of township fifty north range thirty-three west; the west half of township fifty north range thirty-two west, and all of township fifty-one north range thirty-one west, lying west of Huron Bay.

2d. For the La Pointe band, and such other Indians as may see fit to settle with them, a tract of land bounded as follows: Beginning on the south shore of Lake Superior, a few miles west of Montreal River, at the mouth of a creek called by the Indians Ke-che-se-be-we-she, running thence south to a line drawn east and west through the centre of township forty-seven north, thence west to the west line of said township, thence south to the southeast corner of township forty-six north, range thirty-two west, thence west the width of two townships, thence north the width of two townships, thence west one mile, thence north to the lake shore, and thence along the lake shore, crossing Shag-waw-me-quon Point, to the place of beginning. Also two hundred acres on the northern extremity of Madeline Island, for a fishing ground.

3d. For the other Wisconsin bands, a tract of land lying about Lac De Flambeau, and another tract on Lac Court Orielles, each equal in extent to three townships, the boundaries of which shall be hereafter agreed upon or fixed under the direction of the President.

4th. For the Fond Du Lac bands, a tract of land bounded as follows: Beginning at an island in the St. Louis River, above Knife Portage, called by the Indians

Paw-paw-sco-me-me-tig, running thence west to the boundary-line heretofore described, thence north along said boundary-line to the mouth of Savannah River, thence down the St. Louis River to the place of beginning. And if said tract shall contain less than one hundred thousand acres, a strip of land shall be added on the south side thereof, large enough to equal such deficiency.

5th. For the Grand Portage band, a tract of land bounded as follows: Beginning at a rock a little east of the eastern extremity of Grand Portage Bay, running thence along the lake shore to the mouth of a small stream called by the Indians Maw-ske-gwaw-caw-maw-se-be, or Cranberry Marsh River, thence up said stream, across the point to Pigeon River, thence down Pigeon River to a point opposite the starting-point, and thence across to the place of beginning.

6th. The Ontonagon band and that subdivision of the La Pointe band of which Buffalo is chief, may each select, on or near the lake shore, four sections of land, under the direction of the President, the boundaries of which shall be defined hereafter. And being desirous to provide for some of his connections who have rendered his people important services, it is agreed that the chief Buffalo may select one section of land, at such place in the ceded territory as he may see fit, which shall be reserved for that purpose, and conveyed by the United States to such person or persons as he may direct.

7th. Each head of a family, or single person over twenty-one years of age at the present time of the mixed bloods, belonging to the Chipewas of Lake Superior, shall be entitled to eighty acres of land, to be selected by them

under the direction of the President, and which shall be secured to them by patent in the usual form.

Article 3. The United States will define the boundaries of the reserved tracts, whenever it may be necessary, by actual survey, and the President may, from time to time, at his discretion, cause the whole to be surveyed, and may assign to each head of a family or single person over twenty-one years of age, eighty acres of land for his or their separate use; and he may, at his discretion, as fast as the occupants become capable of transacting their own affairs, issue patents therefor to such occupants, with such restrictions of the power of alienation as he may see fit to impose. And he may also, at his discretion, make rules and regulations, respecting the disposition of the lands in case of the death of the head of a family, or single person occupying the same, or in case of its abandonment by them. And he may also assign other lands in exchange for mineral lands, if any such are found in the tracts herein set apart. And he may also make such changes in the boundaries of such reserved tracts or otherwise, as shall be necessary to prevent interference with any vested rights. All necessary roads, highways, and railroads, the lines of which may run through any of the reserved tracts, shall have the right of way through the same, compensation being made therefor as in other cases.

Article 4. In consideration of and payment for the country hereby ceded, the United States agree to pay to the Chippewas of Lake Superior, annually, for the term of twenty years, the following sums, to wit: five thousand dollars in coin; eight thousand dollars in goods, household furniture and cooking utensils; three thousand dollars in agricultural implements and cattle, carpenter's

and other tools and building materials, and three thousand dollars for moral and educational purposes, of which last sum, three hundred dollars per annum shall be paid to the Grand Portage band, to enable them to maintain a school at their village. The United States will also pay the further sum of ninety thousand dollars, as the chiefs in open council may direct, to enable them to meet their present just engagements. Also the further sum of six thousand dollars, in agricultural implements, household furniture, and cooking utensils, to be distributed at the next annuity payment, among the mixed bloods of said nation. The United States will also furnish two hundred guns, one hundred rifles, five hundred beaver-traps, three hundred dollars' worth of ammunition, and one thousand dollars' worth of ready-made clothing, to be distributed among the young men of the nation, at the next annuity payment.

ARTICLE 5. The United States will also furnish a blacksmith and assistant, with the usual amount of stock, during the continuance of the annuity payments, and as much longer as the President may think proper, at each of the points herein set apart for the residence of the Indians, the same to be in lieu of all the employees to which the Chippewas of Lake Superior may be entitled under previous existing treaties.

ARTICLE 6. The annuities of the Indians shall not be taken to pay the debts of individuals, but satisfaction for depredations committed by them shall be made by them in such manner as the President may direct.

ARTICLE 7. No spirituous liquors shall be made, sold, or used on any of the lands herein set apart for the

residence of the Indians, and the sale of the same shall be prohibited in the Territory hereby ceded, until otherwise ordered by the President.

ARTICLE 8. It is agreed, between the Chippewas of Lake Superior and the Chippewas of the Mississippi, that the former shall be entitled to two-thirds, and the latter to one-third, of all benefits to be derived from former treaties existing prior to the year 1847.

ARTICLE 9. The United States agree that an examination shall be made, and all sums that may be found equitably due to the Indians, for arrearages of annuity or other thing, under the provisions of former treaties, shall be paid as the chiefs may direct.

ARTICLE 10. All missionaries, and teachers, and other persons of full age, residing in the territory hereby ceded, or upon any of the reservations hereby made by authority of law, shall be allowed to enter the land occupied by them at the minimum price whenever the surveys shall be completed to the amount of one quarter-section each.

ARTICLE 11. All annuity payments to the Chippewas of Lake Superior, shall hereafter be made at L'Anse, La Pointe, Grand Portage, and on the St. Louis River; and the Indians shall not be required to remove from the homes hereby set apart for them. And such of them as reside in the territory hereby ceded, shall have the right to hunt and fish therein, until otherwise ordered by the President.

ARTICLE 12. In consideration of the poverty of the Bois Forte Indians who are parties to this treaty, they having never received any annuity payments, and of the great extent of that part of the ceded country owned

exclusively by them, the following additional stipulations are made for their benefit. The United States will pay the sum of ten thousand dollars, as their chiefs in open council may direct, to enable them to meet their present just engagements. Also the further sum of ten thousand dollars, in five equal annual payments, in blankets, cloth, nets, guns, ammunition, and such other articles of necessity as they may require.

They shall have the right to select their reservation at any time hereafter, under the direction of the President; and the same may be equal in extent, in proportion to their numbers, to those allowed the other bands, and be subject to the same provisions.

They shall be allowed a blacksmith, and the usual smithshop supplies, and also two persons to instruct them in farming, whenever in the opinion of the President it shall be proper, and for such length of time as he shall direct.

It is understood that all Indians who are parties to this treaty, except the Chippewas of the Mississippi, shall hereafter be known as the Chippewas of Lake Superior. *Provided*, That the stipulation by which the Chippewas of Lake Superior relinquishing their right to land west of the boundary-line shall not apply to the Bois Forte band who are parties to this treaty.

ARTICLE 13. This treaty shall be obligatory on the contracting parties, as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Henry C. Gilbert, and the said David B. Herriman, commissioners as aforesaid,

and the undersigned chiefs and headmen of the Chippewas of Lake Superior and the Mississippi, have hereunto set their hands and seals, at the place aforesaid, this thirtieth day of September, one thousand eight hundred and fifty-four.

Henry C. Gilbert,
David B. Herriman,
Commissioners.

Richard M. Smith, Secretary.

La Pointe Band:

Ke-che-waish-ke, or the Buffalo, 1st chief, his x mark. [L. S.]
Chay-che-que-oh, 2d chief, his x mark. [L. S.]
A-daw-we-ge-zhick, or Each Side of the sky, 2d chief, his x mark. [L. M.]
O-ske-naw-way, or the Youth, 2d chief, his x mark. [L. M.]
Maw-caw-day-pe-nay-se, or the Black Bird, 2d chief, his x mark. [L. S.]
Naw-waw-naw-quot, headman, his x mark. [L. S.]
Ke-wain-zeence, headman, his x mark. [L. S.]
Waw-baw-ne-me-ke, or the White Thunder, 2d chief, his x mark. [L. S.]
Pay-baw-me-say, or the Soarer, 2d chief, his x mark. [L. M.]
Naw-waw-ge-waw-nose, or the Little Current, 2d chief, his x mark. [L. S.]
Maw-caw-day-waw-quot, or the Black Cloud, 2d chief, his x mark. [L. S.]
Me-she-naw-way, or the Disciple, 2d chief, his x mark. [L. S.]
Key-me-waw-naw-um, headman, his x mark. [L. S.]
She-gog headman, his x mark. [L. S.]

Ontonagon Band:

O-cun-de-cun, or the Buoy 1st chief, his x mark. [L. S.]

Waw-say-ge-zhick, or the Clear Sky, 2d chief, his x mark. [L. S.]
Keesh-ke-taw-wug, headman, his x mark. [L. S.]

L'Anse Band:

David King, 1st chief, his x mark. [L. S.]
John Southwind, headman, his x mark. [L. S.]
Peter Marksman, headman, his x mark. [L. S.]
Naw-taw-me-ge-zhick, or the First Sky, 2d chief, his x mark. [L. M.]
Aw-se-neece, headman, his x mark. [L. M.]

Vieux De Sert Band:

May-dway-aw-she, 1st chief, his x mark. [L. S.]
Posh-quay-gin, or the Leather, 2d chief, his x mark. [L. S.]

Grand Portage Band:

Shaw-gaw-naw-sheence, or the Little Englishman, 1st chief, his x mark. [L. S.]
May-mosh-caw-wosh, headman, his x mark. [L. S.]
Aw-de-Konse, or the Little Reindeer, 2d chief, his x mark. [L. S.]
Way-we-ge-wam, headman, his x mark. [L. M.]

Fond Du Lac Band:

Shing-goope, or the Balsom, 1st chief, his x mark. [L. S.]
Mawn-go-sit, or the Loon's Foot, 2d chief, his x mark. [L. S.]
May-quaw-me-we-ge-zhick, headman, his x mark. [L. S.]
Keesh-kawk, headman, his x mark. [L. S.]
Caw-taw-waw-be-day, headman, his x mark. [L. S.]
O-saw-gee, headman, his x mark. [L. S.]
Ke-che-aw-ke-wain-ze, headman, his x mark. [L. S.]
Naw-gaw-nub, or the Foremost Sitter, 2d chief, his x mark. [L. S.]
Ain-ne-maw-sung, 2d chief, his x mark. [L. S.]
Naw-aw-bun-way, headman, his x mark. [L. S.]

Wain-ge-maw-tub, headman, his x mark. [L. S.]
Aw-ke-wain-zeence, headman, his x mark. [L. S.]
Shay-way-be-nay-se, headman, his x mark. [L. S.]
Paw-pe-oh, headman, his x mark. [L. S.]

Lac Court Oreille Band:

Aw-ke-wain-ze, or the Old Man, 1st chief, his x mark. [L. S.]
Key-no-zhance, or the Little Jack Fish, 1st chief, his x mark. [L. S.]
Key-che-pe-nay-se, or the Big Bird, 2d chief, his x mark. [L. S.]
Ke-che-waw-be-shay-she, or the Big Martin, 2d chief, his x mark. [L. S.]
Waw-be-shay-sheence, headman, his x mark. [L. S.]
Quay-quay-cub, headman, his x mark. [L. S.]
Shaw-waw-no-me-tay, headman, his x mark. [L. S.]
Nay-naw-ong-gay-be, or the Dressing Bird, 1st chief, his x mark. [L. S.]
O-zhaw-waw-sco-ge-zhick, or the Blue Sky, 2d chief, his x mark. [L. S.]
I-yaw-banse, or the Little Buck, 2d chief, his x mark. [L. S.]
Ke-che-e-nin-ne, headman, his x mark. [L. S.]
Haw-daw-gaw-me, headman, his x mark. [L. S.]
Way-me-te-go-she, headman, his x mark. [L. S.]
Pay-me-ge-wung, headman, his x mark. [L. S.]

Lac Du Flambeau Band:

Aw-mo-re, or the Wasp, 1st chief, his x mark. [L. S.]
Ke-nish-te-no, 2d chief, his x mark. [L. M.]
Me-gee-see, or the Eagle, 2d chief, his x mark. [L. S.]
Kay-kay-co-gwaw-nay-aw-she, headman, his x mark. [L. S.]
O-che-chog, headman, his x mark. [L. S.]
Nay-she-kay-gwaw-nay-be, headman, his x mark. [L. S.]
O-scaw-bay-wis, or the Waiter, 1st chief, his x mark. [L. S.]
Que-we-zance, or the White Fish, 2d chief, his x mark. [L. S.]
Ne-gig, or the Otter, 2d chief, his x mark. [L. S.]

Nay-waw-che-ge-ghick-may-be, headman, his x mark. [L. S.]
Quay-quay-ke-cah, headman, his x mark. [L. S.]

Bois Forte Band:

Kay-baish-caw-daw-way, or Clear Round the Prairie, 1st chief, his x mark. [L. S.]
Way-zaw-we-ge-zhick-way-sking, headman, his x mark. [L. S.]
O-saw-we-pe-nay-she, headman, his x mark. [L. S.]

The Mississippi Bands:

Que-we-san-ee, or Hole in the Day, head chief, his x mark. [L. S.]
Caw-nawn-daw-waw-win-zo, or the Berry Hunter, 1st chief, his x mark. [L. S.]
Waw-bow-jieg, or the White Fisher, 2d chief, his x mark. [L. S.]
Ot-taw-waw, 2d chief, his x mark. [L. S.]
Que-we-zhan-cis, or the Bad Boy, 2d chief, his x mark. [L. S.]
Bye-a-jick, or the Lone Man, 2d chief, his x mark. [L. S.]
I-yaw-shaw-way-ge-zhick, or the Crossing Sky, 2d chief, his x mark. [L. S.]
Maw-caw-day, or the Bear's Heart, 2d chief, his x mark. [L. S.]
Ke-way-de-no-go-nay-be, or the Northern Feather, 2d chief, his x mark. [L. S.]
Me-squaw-dace, headman, his x mark. [L. S.]
Naw-gaw-ne-gaw-bo, headman, his x mark. [L. S.]
Wawm-be-de-yea, headman, his x mark. [L. S.]
Waish-key, headman, his x mark. [L. S.]
Caw-way-caw-me-ge-skung, headman, his x mark. [L. S.]
My-yaw-ge-way-we-dunk, or the One who carries the Voice, 2d chief, his x mark. [L. S.]

John F. Godfroy,)
Geo. Johnston,)
S. A. Marvin,)
Louis Codot,) Interpreters.
Paul H. Beaulieu,)
Henry Blatchford,)
Peter Floy,)

Executed in the presence of –

Henry M. Rice,
J. W. Lynde,
G. D. Williams,
B. H. Connor,
E. W. Muldough,
Richard Godfroy,
D. S. Cash,
H. H. McCullough,
E. Smith Lee,
Wm. E. Vantassel,
L. H. Wheeler.

TREATY WITH THE CHIPPEWA, 1855.

Articles of agreement and convention made and concluded at the city of Washington, this twenty-second day of February, one thousand eight hundred and fifty five, by George W. Manypenny, commissioner, on the part of the United States, and the following-named chiefs and delegates, representing the Mississippi bands of Chippewa Indians, viz: Pug-o-na-ke-shick, or Hole-in-the-day; Que-we-sans-ish, or Bad Boy; Wand-e-kaw, or Little Hill; I-awe-showe-we-ke-shig, or Crossing Sky; Petud-dunce, or Rat's Liver; Mun-o-min-e-kay-shein, or Rice-Maker; Mah-yah-ge-way-we-durg, or the Chorister; Kay-gwa-daush, or the Attempter; Caw-caug-e-we-goon, or Crow Feather; and Show-baush-king, or He that passes under Everything, and the following-named chiefs and delegates representing the Pilager and Lake Winnibigoshish bands of Chippewa Indians, viz: Aish-ke-bug-e-koshe, or Flat Mouth; Be-sheck-kee, or Buffalo; Nay-bun-a-caush, or Young Man's Son; Maug-e-gaw-bow, or Stepping Ahead; Mi-gi-si, or Eagle, and Kaw-be-mub-bee, or North Star, they being thereto duly authorized by the said bands of Indians respectively.

ARTICLE 1. The Mississippi, Pillager, and Lake Winnibigoshish bands of Chippewa Indians hereby cede, sell, and convey to the United States all their right, title, and interest in, and to, the lands now owned and claimed by them, in the Territory of Minnesota, and included within the following boundaries, viz: Beginning at a point where the east branch of Snake River crosses the southern boundary-line of the Chippewa country, east of the Mississippi River, as established by the treaty of July twenty-ninth, one thousand eight hundred and thirty-seven, running thence, up the said branch, to its source; thence,

nearly north in a straight line, to the mouth of East Savannah River; thence, up the St. Louis River, to the mouth of East Swan River; thence, up said river, to its source; thence, in a straight line, to the most westwardly bend of Vermillion River; thence, northwestwardly, in a straightline, to the first and most considerable bend in the Big Fork River; thence, down said river, to its mouth; thence, down Rainy Lake River, to the mouth of Black River; thence, up that river, to its source; thence, in a straight line, to the northern extremity of Turtle Lake; thence, in a straight line, to the mouth of Wild Rice River; thence, up Red River of the North, to the mouth of Buffalo River; thence, in a straight line, to the south-western extremity of Otter-Tail Lake; thence, through said lake, to the source of Leaf River; thence down said river, to its junction with Crow Wing River; thence down Crow Wing River to its junction with the Mississippi River; thence to the commencement on said river of the southern boundary-line of the Chippewa country, as established by the treaty of July twenty-ninth, one thousand eight hundred and thirty-seven; and thence, along said line, to the place of beginning. And the said Indians do further fully and entirely relinquish and convey to the United States, any and all right, title, and interest, of whatsoever nature the same may be, which they may now have in, and to any other lands in the Territory of Minnesota or elsewhere.

ARTICLE 2. There shall be, and hereby is, reserved and set apart, a sufficient quantity of land for the permanent homes of the said Indians; the lands so reserved and set apart, to be in separate tracts, as follows, viz:

For the Mississippi bands of Chippewa Indians: The first to embrace the following fractional townships, viz: forty-two north, of range twenty-five west; forty-two north, of range twenty-six west; and forty-two and forty-three north, of range twenty-seven west; and, also, the three islands in the southern part of Mille Lac. Second, beginning at a point half a mile east of Rabbit Lake; thence south three miles; thence westwardly, in a straight line, to a point three miles south of the mouth of Rabbit River; thence north to the mouth of said river; thence up the Mississippi River to a point directly north of the place of beginning; thence south to the place of beginning. Third, beginning at a point half a mile southwest from the most southwestwardly point of Gull Lake; thence due south to Crow Wing River; thence down said river, to the Mississippi River; thence up said river to Long Lake Portage; thence, in a straight line, to the head of Gull Lake; thence in a southwestwardly direction, as nearly in a direct line as practicable, but at no point thereof, at a less distance than half a mile from said lake, to the place of beginning. Fourth, the boundaries to be, as nearly as practicable, at right angles, and so as to embrace within them Pokagomon Lake; but nowhere to approach nearer said lake than half a mile therefrom. Fifth, beginning at the mouth of Sandy Lake River; thence south, to a point on an east and west line, two miles south of the most southern point of Sandy Lake; thence east, to a point due south from the mouth of West Savannah River; thence north, to the mouth of said river; thence north to a point on an east and west line, one mile north of the most northern point of Sandy Lake; thence west, to Little Rice River; thence down said river to Sandy Lake River; and

thence down said river to the place of beginning. Sixth, to include all the islands in Rice Lake, and also half a section of land on said lake, to include the present gardens of the Indians. Seventh, one section of land for Pug-o-na-ke-shick, or Hole-in-the-day, to include his house and farm; and for which he shall receive a patent in fee-simple.

For the Pillager and Lake Winnibigoshish bands, to be in three tracts, to be located and bounded as follows, viz: First, beginning at mouth of Little Boy River; thence up said river to Lake Hassler; thence through the center of said lake to its western extremity; thence in a direct line to the most southern point of Leech Lake; and thence through said lake, so as to include all the islands therein, to the place of beginning. Second, beginning at the point where the Mississippi River leaves Lake Winnibigoshish; thence north, to the head of the first river; thence west, by the head of the next river, to the head of the third river, emptying into said lake; thence down the latter to said lake; and thence in a direct line to the place of beginning. Third, beginning at the mouth of Turtle River; thence up said river to the first lake; thence east, four miles; thence southwardly, in a line parallel with Turtle River, to Cass Lake; and thence, so as to include all the islands in said lake, to the place of beginning; all of which said tracts shall be distinctly designated on the plats of the public surveys.

And at such time or times as the President may deem it advisable for the interests and welfare of said Indians, or any of them, he shall cause the said reservation, or such portion or portions thereof as may be necessary, to be surveyed; and assign to each head of a family, or

single person over twenty-one years of age, a reasonable quantity of land, in one body, not to exceed eighty acres in any case, for his or their separate use; and he may, at his discretion, as the occupants thereof become capable of managing their business and affairs, issue patents to them for the tracts so assigned to them, respectively; said tracts to be exempt from taxation, levy, sale, or feiture; and not to be aliened or leased for a longer period than two years, at one time, until otherwise provided by the legislature of the State in which they may be situate, with the assent of Congress. They shall not be sold, or alienated, in fee, for a period of five years after the date of the patents; and not then without the assent of the President of the United States being first obtained. Prior to the issue of the patents, the President shall make such rules and regulations as he may deem necessary and expedient, respecting the disposition of any of said tracts in case of the death of the person or persons to whom they may be assigned, so that the same shall be secured to the families of such deceased person; and should any of the Indians to whom tracts may be assigned thereafter abandon them, the President may make such rules and regulations, in relation to such abandoned tracts, as in his judgment may be necessary and proper.

ARTICLE 3. In consideration of, and in full compensation for, the cessions made by the said Mississippi, Pillager, and Lake Winnibigoshish bands of Chippewa Indians, in the first article of this agreement, the United States hereby agree and stipulate to pay, expend, and make provision for, the said bands of Indians, as follows, viz: For the Mississippi bands:

Ten thousand dollars ($10,000) in goods, and other useful articles, as soon as practicable after the ratification of this instrument, and after an appropriation shall be made by Congress therefor, to be turned over to the delegates and chiefs for distribution among their people.

Fifty thousand dollars ($50,000) to enable them to adjust and settle their present engagements, so far as the same, on an examination thereof, may be found and decided to be valid and just by the chiefs, subject to the approval of the Secretary of the Interior; and any balance remaining of said sum not required for the above-mentioned purpose shall be paid over to said Indians in the same manner as their annuity money, and in such instalments as the said Secretary may determine; *Provided*, That an amount not exceeding ten thousand dollars ($10,000) of the above sum shall be paid to such full and mixed bloods as the chiefs may direct, for services rendered heretofore to their bands.

Twenty thousand dollars ($20,000) per annum, in money, for twenty years, provided, that two thousand dollars ($2,000) per annum of that sum, shall be paid or expended, as the chiefs may request, for purposes of utility connected with the improvement and welfare of said Indians, subject to the approval of the Secretary of the Interior.

Five thousand dollars ($5,000) for the construction of a road from the mouth of Rum River to Mille Lac, to be expended under the direction of the Commissioner of Indian Affairs.

A reasonable quantity of land, to be determined by the Commissioner of Indian Affairs, to be ploughed and

prepared for cultivation in suitable fields, at each of the reservations of the said bands, not exceeding, in the aggregate, three hundred acres for all the reservations, the Indians to make the rails and inclose the fields themselves.

For the Pillager and Lake Winnibigoshish bands:

Ten thousand dollars ($10,000) in goods, and other useful articles, as soon as practicable, after the ratification of this agreement, and an appropriation shall be made by Congress therefor; to be turned over to the chiefs and delegates for distribution among their people.

Forty thousand dollars ($40,000) to enable them to adjust and settle their present engagements, so far as the same, on an examination thereof, may be found and decided to be valid and just by the chiefs, subject to the approval of the Secretary of the Interior; and any balance remaining of said sum, not required for that purpose, shall be paid over to said Indians, in the same manner as their annuity money, and in such instalments as the said Secretary may determine; provided that an amount, not exceeding ten thousand dollars ($10,000) of the above sum, shall be paid to such mixed-bloods as the chiefs may direct, for services heretofore rendered to their bands.

Ten thousand six hundred and sixty-six dollars and sixty-six cents ($10,666.66) per annum, in money, for thirty years.

Eight thousand dollars ($8,000) per annum, for thirty years, in such goods as may be requested by the chiefs, and as may be suitable for the Indians, according to their condition and circumstances.

Four thousand dollars ($4,000) per annum, for thirty years, to be paid or expended, as the chiefs may request, for purposes of utility connected with the improvement and welfare of said Indians; subject to the approval of the Secretary of the Interior: *Provided*, That an amount not exceeding two thousand dollars thereof, shall, for a limited number of years, be expended under the direction of the Commissioner of Indian Affairs, for provisions, seeds, and such other articles or things as may be useful in agricultural pursuits.

Such sum as can be usefully and beneficially applied by the United States, annually, for twenty years, and not to exceed three thousand dollars, in any one year, for purposes of education; to be expended under the direction of the Secretary of the Interior.

Three hundred dollars' ($300) worth of powder, per annum, for five years.

One hundred dollars' ($100) worth shot and lead, per annum, for five years.

One hundred dollars' ($100) worth of gilling twine, per annum, for five years.

One hundred dollars' ($100) worth of tobacco, per annum, for five years.

Hire of three laborers at Leech Lake, of two at Lake Winnibigoshish, and of one at Cass Lake, for five years.

Expense of two blacksmiths, with the necessary shop, iron, steel, and tools, for fifteen years.

Two hundred dollars ($200) in grubbing-hoes and tools, the present year.

Fifteen thousand dollars ($15,000) for opening a road from Crow Wing to Leech Lake; to be expended under the direction of the Commissioner of Indian Affairs.

To have ploughed and prepared for cultivation, two hundred acres of land, in ten or more lots, within the reservation at Leech Lake; fifty acres, in four or more lots, within the reservation at Lake Winnibigoshish; and twenty-five acres, in two or more lots within the reservation at Cass Lake; *Provided,* That the Indians shall make the rails and inclose the lots themselves.

A saw-mill, with a portable grist-mill attached thereto, to be established whenever the same shall be deemed necessary and advisable by the Commissioner of Indian Affairs, at such point as he shall think best; and which, together, with the expense of a proper person to take charge of and operate them, shall be continued during ten years: *Provided,* That the cost of all the requisite repairs of the said mills shall be paid by the Indians, out of their own funds.

ARTICLE 4. The Mississippi bands have expressed a desire to be permitted to employ their own farmers, mechanics, and teachers; and it is therefore agreed that the amounts to which they are now entitled, under former treaties, for purposes of education, for blacksmiths and assistants, shops, tools, iron and steel, and for the employment of farmers and carpenters, shall be paid over to them as their annuities are paid: *Provided, however,* That whenever, in the opinion of the Commissioner of Indian Affairs, they fail to make proper provision for the above-

named purposes, he may retain said amounts, and appropriate them according to his discretion, for their education and improvement.

ARTICLE 5. The foregoing annuities, in money and goods, shall be paid and distributed as follows: Those due the Mississippi bands, at one of their reservations; and those due the Pillager and Lake Winnibigoshish bands, at Leech Lake; and no part of the said annuities shall ever be taken or applied, in any manner, to or for the payment of the debts or obligations of Indians contracted in their private dealings, as individuals, whether to traders or other persons. And should any of said Indians become intemperate or abandoned, and waste their property, the President may withhold any moneys or goods, due and payable to such, and cause the same to be expended, applied, or distributed, so as to insure the benefit thereof to their families. If, at any time, before the said annuities in money and goods of either of the Indian parties to this convention shall expire, the interests and welfare of said Indians shall, in the opinion of the President, require a different arrangement, he shall have the power to cause the said annuities, instead of being paid over and distributed to the Indians, to be expended or applied to such purposes or objects as may be best calculated to promote their improvement and civilization.

ARTICLE 6. The missionaries and such other persons as are now, by authority of law, residing in the country ceded by the first article of this agreement, shall each have the privilege of entering one hundred and sixty acres of the said ceded lands, at one dollar and twenty-five cents per acre; said entries not to be made so as to

interfere, in any manner, with the laying off of the several reservations herein provided for.

And such of the mixed bloods as are heads of families, and now have actual residences and improvements in the ceded country, shall have granted to them, in fee, eighty acres of land, to include their respective improvements.

ARTICLE 7. The laws which have been or may be enacted by Congress, regulating trade and intercourse with the Indian tribes, to continue and be in force within the several reservations provided for herein; and those portions of said laws which prohibit the introduction, manufacture, use of, and traffic in, ardent spirits, wines, or other liquors, in the Indian country, shall continue and be in force, within the entire boundaries of the country herein ceded to the United States, until otherwise provided by Congress.

ARTICLE 8. All roads and highways, authorized by law, the lines of which shall be laid through any of the reservations provided for in this convention, shall have the right of way through the same: the fair and just value of such right being paid to the Indians therefor; to be assessed and determined according to the laws in force for the appropriation of lands for such purposes.

ARTICLE 9. The said bands of Indians, jointly and severally, obligate and bind themselves not to commit any depredations or wrong upon other Indians, or upon citizens of the United States; to conduct themselves at all times in a peaceable and orderly manner: to submit all difficulties between them and other Indians to the President, and to abide by his decision in regard to the same,

and to respect and observe the laws of the United States, so far as the same are to them applicable. And they also stipulate that they will settle down in the peaceful pursuits of life, commence the cultivation of the soil, and appropriate their means to the erection of houses, opening farms, the education of their children, and such other objects of improvement and convenience, as are incident to well-regulated society; and that they will abstain from the use of intoxicating drinks and other vices to which they have been addicted.

ARTICLE 10. This instrument shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and the Senate of the United States.

In testimony whereof the said George W. Manypenny, commissioner as aforesaid, and the said chiefs and delegates of the Mississippi, Pillager and Lake Winnibigoshish bands of Chippewa Indians have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

George W. Manypenny, commissioner. [L. S.]

Tug-o-na-ke-shick, or Hole in the the Day, his x mark. [L. S.]
Que-we-sans-ish, or Bad Boy, his x mark. [L. S.]
Waud-e-kaw, or Little Hill, his x mark. [L. S.]
I-awe-showe-we-ke-ehig, or Crossing Sky, his x mark. [L. S.]
Petud-dunce, or Rat's Liver, his x mark. [L. S.]
Mun-o-min-e-kay-shein, or Rice Maker, his x mark. [L. S.]
Aish-ke-bug-e-koehe, or Flat Mouth, his x mark. [L. S.]
Be-sheck-kee, or Buffalo, his x mark. [L. S.]
Nay-bun-a-caush, or Young Man's Son, his x mark. [L. S.]

Mah-yah-ge-way-we-durg, or The Chorister, his x mark. [L. S.]
Kay-gwa-daush, or The Attempter, his x mark. [L. S.]
Caw-cang-e-we-gwan, or Crow Feather, his x mark. [L. S.]
Show-baush-king, or He that Passeth Under Everything, his x mark. [L. S.]

Chief delegates of the Mississippi bands.

Maug-e-gaw-bow, or Stepping Ahead, his x mark. [L. S.]
Mi-gi-si, or Eagle, his x mark. [L. S.]
Kaw-be-mub-bee, or North Star, his x mark. [L. S.]

Chiefs and delegates of the Pillager and Lake Winnibigoshish bands.

Executed in the presence of –

Henry M. Rice,
Geo. Culver.
D. B. Herriman, Indian agent.
J. E. Fletcher.
John Dowling.
T. A. Warren, United States interpreter.
Paul H. Beaulieu, interpreter.
Edward Ashman, interpreter.
C. H. Beaulieu, interpreter.
Peter Roy, interpreter.
Will P. Ross, Cherokee Nation.
Riley Keys.

Act of May 11, 1858, 11 Stat. 285

CHAP. XXXI. – *An Act for the Admission of the State of Minnesota into the Union.*

Whereas an act of Congress was passed February twenty-six, eighteen hundred and fifty-seven, entitled "An act to authorize the people of the Territory of Minnesota to form a constitutional and state government preparatory to their admission into the Union on an equal footing with the original States;" and whereas the people of said Territory did, on the twenty-ninth day of August, eighteen hundred and fifty-seven, by delegates elected for that purpose, form for themselves a constitution and state government, which is republican in form, and was ratified and adopted by the people, at an election held on the thirteenth day of October, eighteen hundred and fifty-seven, for that purpose: therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Minnesota shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

SEC. 2. *And be it further enacted,* That said State shall be entitled to two representatives in Congress until the next apportionment of representatives amongst the several States.

SEC. 3. *And be it further enacted,* That from and after the admission of the State of Minnesota, as hereinbefore provided, all the laws of the United States which are not locally inapplicable shall have the same force and effect within that State as in other States of the Union; and the

said State is hereby constituted a judicial district of the United States, within which a district court, with the like powers and jurisdiction as the district court of the United States for the district of Iowa, shall be established; the judge, attorney, and marshal of the United States for the said district of Minnesota shall reside within the same, and shall be entitled to the same compensation as the judge, attorney, and marshal of the district of Iowa: and in all cases of appeal or writ of error heretofore prosecuted and now pending in the supreme court of the United States, upon any record from the supreme court of Minnesota Territory, the mandate of execution or order of further proceedings shall be directed by the supreme court of the United States to the district court of the United States for the district of Minnesota, or to the supreme court of the State of Minnesota, as the nature of such appeal or writ of error may require; and each of those courts shall be the successor of the supreme court of Minnesota Territory, as to all such cases, with full power to hear and determine the same, and to award mesne or final process therein.

APPROVED, May 11, 1858.

Act of February 26, 1857, 11 Stat. 166

CHAP. LX. – *An Act to authorize the People of the Territory of Minnesota to form a Constitution and State Government preparatory to their Admission in the Union on an equal Footing with the original States.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the inhabitants of that portion of the Territory of Minnesota which is embraced within the following limits to wit: Beginning at the point in the centre of the main channel of the Red River of the North, where the boundary line between the United States and the British possessions crosses the same: thence up the main channel of said river to that of the Boix des Sioux River: thence [up] the main channel of said river to Lake Travers; thence up the centre of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone Lake; thence through its centre to its outlet; thence by a due south line to the north line of the State of Iowa; thence east along the northern boundary of said State to the main channel of the Mississippi River; Thence up the main channel of said river, and following the boundary line of the State of Wisconsin, until the same intersects the Saint Louis River; thence down said river to and through Lake Superior, on the boundary line of Wisconsin and Michigan, until it intersects the dividing line between the United States and the British possessions; thence up Pigeon River, and following said dividing line to the place of beginning – be and they are hereby authorized to form for themselves a Constitution and State Government, by the name of the State of Minnesota and to come into the Union on an

equal footing with the original States, according to the federal constitution.

Sec. 2. *And be it further enacted,* That the said State of Minnesota shall have concurrent jurisdiction on the Mississippi and all other rivers and waters bordering on the said State of Minnesota, so far as the same shall form a common boundary to said State and any other State or States now or hereafter to be formed or bounded by the same; and said river and waters, and the navigable waters leading into the same, shall be common highways, and forever free, as well to the inhabitants of said State as to all other citizens of the United States, without any tax, duty, impost, or toll, therefor.

Sec. 3. *And be it further enacted,* That on the first Monday in June next, the legal voters in each representative district, then existing within the limits of the proposed State are hereby authorized to elect two delegates for each representative to which said district may be entitled according to the apportionment for representatives to the territorial legislature which election for delegates shall be held and conducted, and the returns made, in all respects in conformity with the laws of said Territory regulating the election of representatives; and the delegates so elected shall assemble at the capitol of said Territory on the second Monday in July next, and first determine, by a vote, whether it is the wish of the people of the proposed State to be admitted into the Union at that time and if so, shall proceed to form a constitution, and take all necessary steps for the establishment of a State government, in conformity with the federal constitution subject to the approval and radification of the people for the proposed State.

Sec. 4. *And be it further enacted,* That in the event said convention shall decide in favor of the immediate admission of the proposed State into the Union, it shall be the duty of the United States' marshal for said Territory to proceed to take a census or enumeration of the inhabitants within the limits of the proposed State, under such rules and regulations as shall be prescribed by the Secretary of the Interior, with the view of ascertaining the number of representatives to which said State may be entitled in the Congress of the United States; and said State shall be entitled to one representative and such additional representatives as the population of the State shall, according to the census, show it would be entitled to according to the present ratio of representation.

Sec. 5. *And be it further enacted,* That the following propositions be and the same are hereby offered to the said convention of the people of Minnesota for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory on the United States and upon the said State of Minnesota, to wit:

First. That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools.

Second. That seventy-two sections of land shall set apart and reserved for the use and support of a State university, to be selected by the Governor of said State, subject to the approval of the Commissioner of the General Land-Office, and to be appropriated and applied in

such manner as the legislature of said State may prescribe for the purpose aforesaid, but for no other purpose.

Third. That ten entire sections of land, to be selected by the Governor of said State, in legal subdivisions, shall be granted to said State for the purpose of completing the public buildings, or for the erection of others at the seat of government, under the direction of the legislature thereof.

Fourth. That all salt springs within said State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said State for its use; the same to be selected by the Governor thereof within one year after the admission of said State, and when so selected, to be used or disposed of on such terms, conditions, and regulations as the legislature shall direct: *Provided.* That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall, by this article, be granted to said State.

Fifth. That five per centum of the net proceeds of sales of all public lands lying within said State, which shall be sold by Congress after the admission of the said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State, for the purpose of making public – roads and internal improvements, as the legislature shall direct: *Provided.* The foregoing propositions herein offered are on the condition, that the said convention which shall form the constitution of said State shall provide, by a clause in said constitution, or an ordinance, irrevocable without the consent of the

United States, that said State shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations Congress may find necessary for securing the title in said soil to *bona fide* purchasers thereof; and that no tax shall be imposed on lands belonging to the United States, and that in no case shall non-resident proprietors be taxed higher than residents.

APPROVED, February 26, 1857.

Act of September 30, 1850, 9 Stat. 544

CHAP. SCI. – *An Act making Appropriations for the current and contingent Expenses of the Indian Department, and for fulfilling Treaty Stipulations with various Indian Tribes, for the Year ending June the thirtieth, one thousand eight hundred and fifty-one.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated out of any money in the treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian department, and fulfilling treaty stipulations with the various Indian tribes.

For the current and contingent expenses of the Indian department viz.:

For the pay of superintendent of Indian affairs at St. Louis, and the several Indian agents, as provided by the acts of June thirtieth, eighteen hundred and thirty-four, and March third, eighteen hundred and thirty-seven, and of June twenty-seventh, eighteen hundred and forty-six eighteen thousand dollars.

For expenses of removing the Pottawatomies and Sacs and Foxes from Iowa, west of the Missouri River, to their own lands, agreeably to the terms of a contract entered into by Brevet Major S. Woods, United States army, two thousand dollars.

For medals for Indian chiefs, fifteen hundred dollars.

For expenses of procuring information, and collecting statistics necessary to the Indian bureau, and for making treaties with, and presents to, the various tribes

of Indians residing within the limits of the United States upon the borders of Mexico, thirty thousand dollars.

For expenses of treating with the Mississippi and St. Peter Sioux, for the Extinguishment of their title to lands in Minnesota Territory, fifteen thousand dollars.

For expenses of treating with the Indians and half-breeds for the extinguishment of the title to their lands on the Red River of the North, in the Territory of Minnesota, ten thousand dollars.

For the additional amount for expenses paid for subsistence and improperly charged to the treaty fund, according to the award of the Senate of fifth day of September, eighteen hundred and fifty, under the provisions of the eleventh article of the treaty of sixth day of August, eighteen hundred and forty-six, one hundred and eighty-nine thousand four hundred and twenty-two dollars and seventy-six cents, and that interest be paid on the same at the rate of five per cent per annum, according to a resolution of the Senate of fifth September, eighteen hundred and fifty: *Provided,* That said money shall be paid by the United States and received by the Indians on condition that the same shall be in full discharge of the amount thus improperly charged to said treaty fund: *Provided, further,* That in no case shall any money hereby appropriated be paid to any agent of said Indians, or to any other person or persons that the Indian or Indians to whom it is due *per capita*.

To the "old settlers," or "Western Cherokees," in full of all demands, under the provisions of the treaty of sixth August, eighteen hundred and forty-six, according to the principles established in the fourth article thereof, five

hundred and thirty-two thousand eight hundred and ninety-six dollars and ninety cents; and that interest be allowed and paid upon the above sums due respectively to the Cherokees and "old settles," in persuance of the above-mentioned award of the Senate, under the reference contained in the said eleventh article of the treaty of sixth August, eighteen hundred and forty-six: *Provided,* That in no case shall any money hereby appropriated be paid to any agent of said Indians, or to any other person or persons than the Indian or Indians to whom it is due: *Provided, also,* That the Indians who shall receive the said money shall first respectively sign a receipt or release, acknowledging the same to be in full of all demands under the fourth article of said treaty.

For expenses of the resurvey and making the eastern boundary of the country set apart to the Choctaw Nation, per second article of the treaty of Dancing-Rabbit Creek, of twenty-seventh September, eighteen hundred and thirty, three thousand four hundred and sixty-two dollars.

For expenses of surveying the northern and western boundary lines of the Creek country, per eighth article of the treaty of fourth January, eighteen hundred and forty-five, in addition to former appropriations, ten thousand and seventy-two dollars.

For expenses of negotiating treaty with the Chippewas, ratified in eighteen hundred and forty-eight, in addition to the appropriation made twenty-ninth July, eighteen hundred and forty-eight, one thousand five hundred dollars.

For expenses of removal and subsistance of the Chippewas of Lake Superior and Mississippi from the lands ceded under the treaty of fourth October, eighteen hundred and forty-two, twenty-five thousand dollars.

For payment to David Taylor, representative of Cul-sut-tee-hee, or Hog, for proceeds of property sold by the United States agents, and erroneously paid by Governor P.M. Butler to another than the rightful claimant, said claim having been allowed by the accounting officers of the treasury, seventy dollars and eighty-seven cents.

For continuing the collection, and for publishing the statistics and other information, authorized by the act third March, eighteen hundred and forty-seven, ten thousand dollars: *Provided,* That such publications be made under the direction of the commissioner of Indian affairs, and the number of copies not to exceed twelve hundred.

For an advance to the Chippewas of Mississippi and Lake Superior if this amount retained by the late sub-agent, J.P. Hays, the same to be reimbursed to the United States when recovered from said sub-agent of his sureties, one thousand three hundred and eighty-two dollars and twenty-nine cents.

For an advance to the Wyandott Indians of this sum retained by the late sub-agent, Richard Hewitt, the same to be reimbursed to the United States when received from said sub-agent, or his sureties, eight hundred and twenty-eight dollars and nine cents.

For interest due on investments in stocks of the State of Michigan, held in trust by the Secretary of the Interior for the time being, for the benefit of the Cherokee

Indians, the same to be reimbursed to the United States out of the interest when collected, nineteen thousand and eighty dollars.

For payment to S.B. Lowry, for services rendered as interpreter and assistant conductor to a delegation of Winnebago Indians who visited the seat of government and concluded the treaty with that tribe, of thirteenth October, eighteen hundred and forty-six, three hundred and five dollars.

For payment to Henry M. Rice for articles of outfit furnished the Winnebago delegation who visited the seat of government and concluded the treaty of eighteen hundred and forty-six with that tribe, seven hundred and sixty-two dollars and ten cents.

For payment to Henry M. Rice for expenses as one of the delegates from the Winnebago nation to the city of Washington in eighteen hundred and forty-six, and compensation for valuable services rendered the government in the negotiation of the treaty concluded at that time, six hundred and seventy dollars.

For the reappropriation of the following sums carried to the surplus fund per warrants dated, respectively, thirtieth June, eighteen hundred and forty-six, thirtieth June, eighteen hundred and forty-seven, and thirtieth June, eighteen hundred and forty-eight, viz.:

For payment to the Winnebago Indians of certain unexpended balances of sums set apart for certain objects in the treaty of eighteen hundred and thirty-seven, but not required therefor, and carried to the surplus fund,

twenty-nine thousand two hundred and eighty-eight dollars and forty-nine cents.

For carrying into effect treaty with Sacs and Foxes of Mississippi of eleventh October, eighteen hundred and forty-three, per act third March, eighteen hundred and forty-three, two hundred and eighty-eight dollars and ninety-nine cents.

For arrearages of annuities due Cherokees, per act of twelfth June, eighteen hundred and thirty-eight, thirty-nine thousand eight hundred and seventy-one dollars and ninety-two cents.

For expenses of delegation of Seminoles to Florida, per act of second March, eighteen hundred and forty-one, one thousand six hundred and eleven dollars and thirty cents.

Act of February 27, 1851, 9 stat. 570

CHAP. XII. – *An Act to supply Deficiencies in the Appropriations for the Service of the Fiscal Year ending the thirtieth of June, one thousand eight hundred and fifty-one.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated to supply deficiencies in the appropriations for the service of the fiscal year ending the thirtieth of June, one thousand eight hundred and fifty-one, out of any moneys in the treasury not otherwise appropriated, namely: –

State Department. – For additional compensation to four watchmen in the north-east executive building, five hundred and forty dollars.

For salaries of the judges in the northern and southern districts of California, three thousand two hundred and fifty dollars.

Treasury Department. – For additional compensation to eight watchmen in the south-east executive building, one thousand and eighty dollars.

For contingent expenses in the office of the first auditor of the treasury, for cases for the records, documents, and official papers preserved in the office, and for new furniture, this sum having been transferred, per act September thirtieth, eighteen hundred and fifty, as an addition to the salary of one of the recording clerks, two hundred dollars.

For contingent expenses of office of Indian affairs, nine hundred and twenty-two dollars and five cents.

* * *

of July, eighteen hundred and thirty-six, and twenty-first July, eighteen hundred and forty-eight, seventy-four thousand eight hundred and twenty dollars.

For pensions to widows, under the act of seventh July, one thousand eight hundred thirty-eight, fifty-six thousand dollars.

For pensions to widows, under the act of the third of March, one thousand eight hundred and forty-three, twelve thousand dollars.

For pensions to widows, under the acts of the seventeenth of June, one thousand eight hundred and forty-four, second of February, one thousand eight hundred and forty-eight, and twenty-ninth of July, one thousand eight hundred and forty-eight, forty-four thousand dollars.

For fulfilling treaty with Wyandots, one hundred and eighty-seven thousand dollars.

For fulfilling treaty with the Utahs, eighteen thousand dollars.

For fulfilling treaty with the Navajoes, eighteen thousand dollars.

For arrearages of compensation, from first of October, eighteen hundred and fifty, to thirtieth June, eighteen hundred and fifty-one, to the Indian agents for the Indian

tribes of California, six thousand seven hundred and fifty dollars.

For expenses of holding treaties with the various tribes of Indians in California, in addition to the appropriation of the thirtieth of September, eighteen hundred fifty, twenty-five thousand dollars.

For expenses of removal and subsistence of the Chippewas of Lake Superior and the Mississippi from the lands ceded under the treaties of the twenty-ninth of July, one thousand eight hundred and thirty-seven, and fourth of October, one thousand eight hundred and forty-two, in addition to appropriation of thirtieth September, eighteen hundred and fifty, twenty-five thousand dollars.

For expenses of the removal of the sub-agency for the Chippewas of Lake Superior and the Mississippi from the old site at Lapointe to the new one, including the erection of necessary buildings, three thousand dollars.

For compensation and expenses of the committee of old-settler party of Cherokees, their clerks, &c., for services rendered in pursuance of the provisions contained in the fifth article of the treaty of seventeenth August, eighteen hundred and forty-six, in addition to the appropriation of thirtieth of September, eighteen hundred and fifty, in full for all service rendered, or hereafter to be rendered, one thousand five thousand dollars.

For expenses of holding treaties with the wild tribes of the prairie, and for bringing delegates on to the seat of government, one hundred thousand dollars.

For expenses of the removal and subsistence of the Choctaws from the State of Mississippi to the Choctaw

country west of that river, in addition to former appropriations for that object, twenty thousand dollars.

For payment to the Winnebago Indians, of this sum erroneously charged against the fund of ten thousand dollars set apart (out of the consideration to be paid for the lands ceded) by the eighth clause of the fourth article of the treaty of the first of November, eighteen hundred and thirty-seven, six thousand two hundred and twenty-eight dollars and twenty-eight cents.

For payment to the Cherokee nation, the sum of seven hundred and twenty-four thousand six hundred and three dollars and thirty-seven cents, and interest on the above sum, at the rate of five per centum per annum, from twelfth day of June, eighteen hundred and thirty-eight, until paid, shall be paid to them out of any money in the treasury not otherwise appropriated; but no interest shall be paid after the first of April, eighteen hundred and fifty-one, if any portion of the money is

* * *

Act of December 19, 1854, 10 stat. 598

CHAP. VII – *An Act to provide for the extinguishment of the title of the Chippewa Indians to the Lands owned and claimed by them in the Territory of Minnesota, and State of Wisconsin, and for their Domestication and Civilization.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to cause negotiations to be entered into with the Chippewa Indians, for the extinguishment of their title to all the lands owned and claimed by them in the Territory of Minnesota and State of Wisconsin, which treaties shall contain the following provisions, and such others as may be requisite and proper to carry the same into effect: –

First. Granting to each head of a family, in fee simple, a reservation of eighty acres of land, to be selected in the territory ceded, so soon as surveys shall be completed, by those entitled, which said reservations shall be patented by the President of the United States, and the patent therefor shall expressly declare that the said lands shall not be alienated or leased by the reservees, or their heirs and legal representatives, until otherwise ordered by Congress, and no change of location shall be made without the assent of the President of the United States.

Second. The annuities to which said Indians are entitled, under existing treaties, with the consent of said Indians, together with such as may be allowed them for the cession, or cessions, under the provisions of this act, shall be equally distributed and paid them at their villages, or settlements, within the limits of the ceded territory; but the President shall be invested with power to

cause said annuities to be commuted, from time to time, for such articles of goods, provisions, stock, cattle, implements of agriculture, the clearing and fencing of land, and the erection of buildings and other improvements, as, in his discretion, will conduce most to promote their comfort, civilization, and permanent welfare.

Third. All the benefits and privileges granted to said Indians shall be extended to and enjoyed by the mixed bloods belonging to or connected with the tribe, and who shall permanently reside on the ceded lands.

Fourth. The laws of the United States and the Territory of Minnesota shall be extended over the Chippewa territory in Minnesota whenever the same may be ceded, and the same shall cease to be "Indian country," except that the lands reserved to said Indians, or other property owned by them, shall be exempt from taxation and execution; and that the act passed thirtieth June, eighteen hundred and thirty-four, "to regulate trade and intercourse with the Indian tribes," etc., be inoperative over the said ceded territory, except the twentieth section, which prohibits the introduction and sale of spirituous liquors to Indians.

Fifth. The President shall have power to prescribe and enforce such rules and regulations, not inconsistent with the foregoing provisions, as he may deem necessary for the effectual execution of the purposes of this act, which said rules and regulations shall be annually reported to Congress.

SEC. 2. *And be it further enacted,* That, for the purpose of defraying the expenses of said negotiations, the sum of

ten thousand dollars be, and the same is hereby, appropriated out of any money in the treasury not otherwise appropriated.

APPROVED, December 19, 1854.

Act of January 14, 1889, 25 stat. 642 entitled "An Act for the Relief and Civilization of the Chippewa Indians in the State of Minnesota" (Nelson Act).

CHAP. 24. – An act for the relief and civilization of the Chippewa Indians in the State of Minnesota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the President of the United States is hereby authorized and directed, within sixty days after the passage of this act, to designate and appoint three commissioners, one of whom shall be a citizen of Minnesota, whose duty it shall be, as soon as practicable after their appointment, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated; and such cession and relinquishment shall be deemed sufficient as to each of said several reservations except as to the Red Lake Reservation, if made and assented to in writing by two-thirds of the male adults over eighteen years of age of the band, or tribe of Indians occupying and belonging to such reservations: and as to the Red Lake Reservation the cession and reliquishment shall be deemed sufficient if made and assented to in like manner by two-thirds of the male adults of all the Chippewa Indians in Minnesota;

and provided that all agreements thererfor shall be approved by the President of the United States before taking effect: *Provided further,* That in any case where an allotment [sic] in severalty has heretofore been made to any Indian of land upon any of said reservations, he shall not be deproved thereof or disturbed therein except by his own individual consent separately and previously given, in such form and manner as may be prescribed by the Secretary of the Interior. And for the purpose of ascertaining whether the proper number of Indians yield and give their assent as aforesaid, and for the purpose of making the allotments and payments hereinafter mentioned, the said commissioners shall, while engaged in securing such cession and relinquishment as aforesaid and before completing the same, make an accurate census of each tribe or band, classifying them into male and female adults, and male and female minors; and the minors into those who are orphans and those who are not orphans, giving the exact numbers of each class and making such census in duplicate lists, one of which shall be filed with the Secretary of the Interior, and the other with the official head of the band or tribe; and the acceptance and approval of such cession and relinquishment by the President of the United States shall, be deemed full and ample proof of the assent of the Indians, and shall operate as a complete extinguishment of the Indian title without any other or further act or ceremony whatsoever for the purposes and upon the terms in this act provided.

SEC. 2. That the said commissioners shall, before entering upon the discharge of their duties, each give a bond to the United States in the sum of ten thousand dollars, with sufficient sureties, to be approved by the

Secretary of the Interior, and conditioned for the faithful discharge of their duties under this act, and they shall also each take an oath to support the Constitution of the United States, and to faithfully discharge the duties of their office, which bonds and oaths shall be filed with the Secretary of the Interior. Said commissioners shall be entitled to a compensation of ten dollars per day for each day actually employed in the discharge of their duties, and for their actual traveling expenses and board, not exceeding three dollars per day. Said commissioners shall also be authorized to employ a competent interpreter while engaged in the performance of their duties, at a compensation and allowance to be fixed by them, not in excess of that allowed to each of them under this act.

SEC. 3. That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven, entitled "An act for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes"; and all allotments heretofore made to any of said Indians on the White Earth

Reservation are hereby ratified and confirmed with the like tenure and condition prescribed for all allotments under this act: *Provided, however,* That the amount heretofore allotted to any Indian on White Earth Reservation shall be deducted from the amount of allotment to which he or she is entitled under this act: *Provided further,* That any of the Indians residing on any of said reservations may, in his discretion, take his allotment in severalty under this act on the reservation where he lives at the time of the removal herein provided for is effected, instead of being removed to and taking such allotment on White Earth Reservation.

SEC. 4. That as soon as the cession and relinquishment of said Indian title has been obtained and approved as aforesaid, it shall be the duty of the Commissioners of the General Land Office to cause the lands so ceded to the United States to be surveyed in the manner provided by law for the survey of public lands, and as soon as practicable after such survey has been made, and the report, field-notes, and plats thereof filed in the General Land Office, and duly approved by the Commissioner thereof, the said Secretary of the Interior, upon notice of the completion of such surveys, shall appoint a sufficient number of competent and experienced examiners, in order that the work may be done within a reasonable time, who shall go upon said lands thus surveyed and personally made a careful, complete, and thorough examination of the same by forty-acre lots, for the purpose of ascertaining on which lots or tracts there is standing or growing pine timber, which tracts on which pine timber is standing or growing for the purposes of this act shall be termed "pine lands," the minutes of such examination

to be at the time entered in books provided for that purpose, showing with particularity the amount and quality of all pine timber standing or growing on any lot or tract, the amount of such pine timber to be estimated by feet in the manner usual in estimating such timber, which estimates and reports of all such examinations shall be filed with the Commissioner of the General Land Office as a part of the permanent records thereof, and thereupon that officer shall cause to be made a list of all such pine lands, describing each forty-acre lot or tract thereof separately, and opposite each such description he shall place the actual cash value of the same, according to his best judgment and information, but such valuation shall not be at a rate of less than three dollars per thousand feet, board measure of the pine timber thereon, and thereupon such lists of lands so appraised shall be transmitted to the Secretary of the Interior for approval, modification, or rejection, as he may deem proper. If the appraisals are rejected as a whole then the Secretary of the Interior shall substitute a new appraisal and the same or original list as approved or modified shall be filed with the Commissioner of the General Land Office as the appraisal of said lands, and as constituting the minimum price for which said lands may be sold, as hereinafter provided, but in no event shall said pine lands be appraised at a rate of less than three dollars per thousand feet board measure of the pine timber thereon. Duplicate lists of said lands as appraised, together with copies of the field-notes, surveys, and minutes of examinations shall be filed and kept in the office of the register of the land office of the district within which said lands may be situated, and copies of said lists with the appraisals shall

be furnished to any person desiring the same upon application to the Commissioner of the General Land Office or to the register of said local land office.

The compensation of the examiners so provided for in this section shall be fixed by the Secretary of the Interior, but in no event shall exceed the sum of six dollars per day for each person so employed, including all expenses.

All other lands acquired from the said Indians on said reservations other than pine lands are for the purposes of this act termed "agricultural lands."

SEC. 5. That after the survey, examination, and appraisals of said pine lands has been fully completed they shall be proclaimed as in market and offered for sale in the following manner: The Commissioner of the General Land Office shall cause notices to be inserted once in each week for four successive weeks in one newspaper of general circulation published in Minneapolis, Saint Paul, Duluth, and Crookston, Minnesota; Chicago, Illinois; Milwaukee, Wisconsin; Detroit, Michigan; Philadelphia and Williamsport, Pennsylvania; and Boston, Massachusetts, of the sale of said lands at public auction to the highest bidder for cash at the local land office of the district within which said lands are located, said notice to state the time and place and terms of such sale. At such sale said lands shall be offered in forty-acre parcels, except in case of fractions containing either more or less than forty acres, which shall be sold entire. In no event shall any parcel be sold for a less sum than its appraised value. The residue of such lands remaining unsold after such public offering shall thereafter be subject to private sale for cash

at the appraised value of the same upon application at the local land office.

SEC. 6. That when any of the agricultural lands on said reservation not allotted under this act nor reserved for the future use of said Indians have been surveyed, the Secretary of the Interior shall give thirty days' notice through at least one newspaper published at Saint Paul and Crookston, in the State of Minnesota, and, at the expiration of thirty days, the said agricultural lands so surveyed, shall be disposed of by the United States to actual settlers only under the provisions of the homestead law: *Provided*, That each settler under and in accordance with the provisions of said homestead laws shall pay to the United States for the land so taken by him the sum of one dollar and twenty-five cents for each and every acre, in five equal annual payments, and shall be entitled to a patent therefor only at the expiration of five years from the date of entry, according to said homestead laws, and after the full payment of said one dollar and twenty-five cents per acre therefor, and due proof of occupancy for said period of five years; and any conveyance of said lands so taken as a homestead, or any contract touching the same, prior to the date of final entry, shall be null and void: *Provided*, That nothing in this act shall be held to authorize the sale or other disposal under its provision of any tract upon which there is a subsisting, valid, pre-emption or homestead entry, but any such entry shall be proceeded with under the regulations and decisions in force at the date of its allowance, and if found regular and valid, patents shall issue thereon: *Provided*, That any person who has not heretofore had the benefit of the homestead or pre-emption law, and who has failed from

any cause to perfect the title to a tract of land heretofore entered by him under either of said laws may make a second homestead entry under the provisions of this act.

SEC. 7. That all money accruing from the disposal of said lands in conformity with the provisions of this act shall, after deducting all the expenses of making the census, of obtaining the cession and relinquishment, of making the removal and allotments, and of completing the surveys and appraisals, in this act provided, be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota as a permanent fund, which shall draw interest at the rate of five per centum per annum, payable annually for the period of fifty years, after the allotments provided for in this act have been made, and which interest and permanent fund shall be expended for the benefit of said Indians in manner following: One-half of said interest shall, during the said period of fifty years, except in the cases hereinafter otherwise provided, be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use; and one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in

cash, in equal shares: *Provided*, That Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof. The United States shall, for the benefit of said Indians, advance to them as such interest as aforesaid the sum of ninety thousand dollars annually, counting from the time when the removal and allotments provided for in this act shall have been made, until such time as said permanent fund, exclusive of the deductions hereinbefore provided for, shall equal or exceed the sum of three million dollars, less any actual interest that may in the meantime accrue from accumulations of said permanent fund; the payments of such interest to be made yearly in advance, and, in the discretion of the Secretary of the Interior, may, as to three-fourths thereof, during the first five years be expended in procuring live-stock, teams, farming implements, and seed for such of the Indians to the extent of their shares as are fit and desire to engage in farming, but as to the rest, in cash; and whenever said permanent fund shall exceed the sum of three million dollars the United States shall be fully reimbursed out of such excess, for all the advances of interest made as herein contemplated and other expenses hereunder.

SEC. 8. That the sum of one hundred and fifty thousand dollars is hereby appropriated, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to pay for procuring the cession and relinquishment, making the census, surveys, appraisals, removal and allotments, and the first annual

payment of interest herein contemplated and provided for, which money shall be expended under the direction of the Secretary of the Interior in conformity with the provisions of this act. A detailed statement of which expenses, except the interest aforesaid, shall be reported to Congress when the expenditures shall be completed.

Approved, January 14, 1889.

H.R. Exec. Doc. No. 51-247, (1890) (Message of Pres. Benjamin Harrison, March 4, 1890).

HOUSE OF REPRESENTATIVES.

51ST CONGRESS, 1st Session.) (Ex. Doc. (No. 247.

CHIPPEWA INDIANS IN MINNESOTA.

MESSAGE
FROM THE
PRESIDENT OF THE UNITED STATES,
TRANSMITTING

A communication from the Secretary of the Interior relative to the Chippewa Indians in the State of Minnesota.

MARCH 6, 1890. – Referred to the Committee on Indian Affairs.

To the Senate and House of Representatives:

In pursuance of the authority and direction contained in the act of Congress approved January 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," three commissioners were appointed by the President on February 26, 1889, as therein authorized and directed, namely: Henry M. Rice, of Minnesota, Martin Marty, of Dakota, and Joseph B. Whiting, of Wisconsin, to negotiate with said Indians.

The commissioners have submitted their final report, with accompanying papers, showing the results of the negotiations conducted by them, and the same has been carefully reviewed by the Secretary of the Interior in his report to me thereon.

Being satisfied from an examination of the papers submitted that the cession and relinquishment by said Chippewa Indians of their title and interest in the lands specified and described in the agreement with the different bands or tribes of Chippewa Indians in the State of Minnesota was obtained in the manner prescribed in the first section of said act, and that more than the requisite number have signed said agreement, I have, as provided by said act, approved the said instruments in writing constituting the agreement entered into by the commissioners with said Indians.

The commissioners did not escape the embarrassment which unfortunately too often attends our negotiations with the Indians, viz: An indisposition to treat with the Government for further concessions while its obligations incurred under former agreements are unkept. I am sure it will be the disposition of Congress to consider promptly, and in a just and friendly spirit, the claims presented by these Indians through our commissioners, which have been formulated in the draught of a bill prepared by the Secretary of the Interior and submitted herewith.

The act of January 14, 1889 (25 U. S. Stat., 612) evidently contemplated the voluntary removal of the body of all these bands of Indians to the White Earth and Red Lake Reservations; but a proviso in section 3 of the

act authorized any Indian to take his allotment upon the reservation where he now resides. The commissioners report that quite a general desire was expressed by the Indians to avail themselves of this option. The result of this is that the ceded land can not be ascertained and brought to sale under the act until all of the allotments are made.

I recommend that the necessary appropriations to complete the surveys and allotments be made at once available, so that the work may be begun and completed at the earliest possible day.

A copy of the report made by the commissioners, with copies of all of the papers submitted therewith except the census rolls, is herewith presented for the information of the Congress.

BENJ. HARRISON.

EXECUTIVE MANSION,
March 4, 1890.

Patent issued by President Cleveland for one Petitioner's Property In The Minnesota Portion of the 1837 Ceded Territory

DEED RECORD

The United States of America
– TO –

PRE-EMPTION PATENT.

Filed for Record Aug. 22nd A.D. 1896, at 10 o'clock A. M.

/s/ J.W. Goulding
Register of Deeds.

THE UNITED STATES OF AMERICA,

Certificate No. 7975) To all to whom these Presents shall come, Greeting:

WHEREAS, John Colson of Mille Lacs County Minnesota has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Taylors Falls Minnesota whereby it appears that full payment has been made by the said John Colson according to the provisions of the Act of Congress of the 24th April, 1820, entitled, "An Act making further provision for the sale of Public Lands," and the acts Supplemental there to for the Lot Numbered One, the South half of the North west 2 marker and the North East 3 marker of the South West 2 marker of Section Eleven in Township Forty-two North of Range Twenty-five West of the Fourth Principal Meridian in Minnesota, containing one hundred and fifty-six acres and forty-hundredth of an acre.

according to the Official Plat of the Survey of the said Land, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said John Colson

NOW, KNOW YE, That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress, in such case made and provided, have Given and Granted, and by these presents do Give and Grant unto the said John Colson

and to his heirs, the said tract above described.

TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature, thereunto belonging, unto the said John Colson

and to his heirs and assigns, forever.

IN TESTIMONY WHEREOF, I, Grover Cleveland President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

(SEAL)
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Given under my hand, at the City of Washington, the Seventeenth day of July in the year of our Lord one thousand eight hundred and Ninety-four and of the Independence of the United States the one hundred and Nineteenth

By The President: Grover Cleveland

By M McKean Secretary.

L.Q. C. Lamier
Recorder of the General Land Office.

60 Stat. 1049 (1946), Indian Claims Commission Act.

AN ACT

To create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby created and established an Indian Claims Commission, hereafter referred to as the Commission.

JURISDICTION

SEC. 2. The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska: (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the

claimant; and (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity. No claim accruing after the date of the approval of this Act shall be considered by the Commission.

All claims hereunder may be heard and determined by the Commission notwithstanding any statute of limitations or laches, but all other defenses shall be available to the United States.

In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim, and for all other offsets, counterclaims, and demands that would be allowable in a suit brought in the Court of Claims under section 145 of the Judicial Code (36 Stat. 1136; 28 U. S. C. sec. 250), as amended; the Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures against any award made to the claimant, except that it is hereby declared to be the policy of Congress that monies spent for the removal of the claimant from one place to another at the request of the United States, or for agency or other administrative, educational, health or highway purposes, or for expenditures made prior to the date of the law, treaty or Executive Order under which the claim arose, or for expenditures made pursuant to the Act of June 18, 1934 (48 Stat. 984), save expenditures made under section 5 of that Act, or for expenditures under any emergency

appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public work and public projects for the relief of unemployment or to increase employment, and for work relief (including the Civil Works Program) shall not be a proper offset against any award.

MEMBERSHIP APPOINTMENT; OATH; SALARY

SEC. 3. (a) The Commission shall consist of a Chief Commissioner and two Associate Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate, and each of whom shall receive a salary of $10,000 per year. At all times at least two members of the Commission shall be members of the bar of the Supreme Court of the United States in good standing: *Provided further,* That not more than two of the members shall be of the same political party. Each of them shall take an oath to support the Constitution of the United States and to discharge faithfully the duties of his office.

TERM OF OFFICE; VACANCIES; REMOVAL

(b) The Commissioners shall hold office during their good behavior until the dissolution of the Commission as hereinafter provided. Vacancies shall be filled in the same manner as the original appointments. Members of the Commission may be removed by the President for cause after notice and opportunity to be heard.

NOT TO ENGAGE IN OTHER VOCATIONS OR REPRESENT TRIBES

(c) No Commissioner shall engage in any other business, vocation, or employment during his term of office nor shall he, during his term of office or for a period of two years thereafter, represent any Indian tribe, band, or group in any matter whatsoever, or have any financial interest in the outcome of any tribal claim. Any person violating the provisions of this subdivision shall be fined not more than $10,000 or imprisoned not more than two years, or both.

QUORUM

(d) Two members shall constitute a quorum, and the agreement of two members shall be necessary to any and all determinations for the transaction of the business of the Commission, and, if there be a quorum, no vacancy shall impair or affect the business of the Commission, or its determinations.

STAFF OF COMMISSION

SEC. 4. The Commission shall appoint a clerk and such other employees as shall be requisite to conduct the business of the Commission. All such employees shall take oath for the faithful discharge of their duties and shall be under the direction of the Commission in the performance thereof.

OFFICES

SEC. 5. The principal office of the Commission shall be in the District of Columbia.

EXPENSES OF COMMISSION

SEC. 6. All necessary expenses of the Commission shall be paid on the presentation of itemized vouchers therefor approved by the Chief Commissioner or other member or officer designated by the Commission.

TIME OF MEETINGS

SEC. 7. The time of the meetings of the Commission shall be prescribed by the Commission.

RECORD

SEC. 8. A full written record shall be kept of all hearings and proceedings of the Commission and shall be open to public inspection.

CONTROL OF PROCEDURE

SEC. 9. The Commission shall have power to establish its own rules of procedure.

PRESENTATION OF CLAIM

SEC. 10. Any claim within the provisions of this Act may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but wherever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of

such organization be shown to the satisfaction of the Commission.

TRANSFER OF SUITS FROM COURT OF CLAIMS

SEC. 11. Any suit pending in the Court of Claims or the Supreme Court of the United States or which shall be filed in the Court of Claims under existing legislation, shall not be transferred to the Commission: *Provided*, That the provisions of section 2 of this Act, with respect to the deduction of payments, offsets, counterclaims and demands, shall supersede the provisions of the particular jurisdictional Act under which any pending or authorized suit in the Court of Claims has been or will be authorized: *Provided further*, That the Court of Claims in any suit pending before it at the time of the approval of this Act shall have exclusive jurisdiction to hear and determine any claim based upon fair and honorable dealings arising out of the subject matter of any such suit.

LIMITATIONS

SEC. 12. The Commission shall receive claims for a period of five years after the date of the approval of this Act and no claim existing before such date but not presented within such period may thereafter be submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by the Congress.

NOTICE AND INVESTIGATION

SEC. 13. (a) As soon as practicable the Commission shall send a written explanation of the provisions of this

Act to the recognized head of each Indian tribe and band, and to any other identifiable groups of American Indians of the United States and Alaska, and to the superintendents of all Indian agencies, who shall promulgate the same, and shall request that a detailed statement of all claims be sent to the Commission, together with the names of aged or invalid Indians from whom depositions should be taken immediately and a summary of their proposed testimonies.

(b) The Commission shall establish an Investigation Division to investigate all claims referred to it by the Commission for the purpose of discovering the facts relating thereto. The Division shall make a complete and thorough search for all evidence affecting each claim, utilizing all documents and records in the possession of the Court of Claims and the several Government departments, and shall submit such evidence to the Commission. The Division shall make available to the Indians concerned and to any interested Federal agency any data in its possession relating to the rights and claims of any Indian.

CALLS UPON DEPARTMENTS FOR INFORMATION

SEC. 14. The Commission shall have the power to call upon any of the departments of the Government for any information it may deem necessary, and shall have the use of all records, hearings, and reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business.

At any hearing held hereunder, any official letter, paper, document, map, or record in the possession of any

officer or department, or court of the United States or committee of Congress (or a certified copy thereof), may be used in evidence insofar as relevant and material, including any deposition or other testimony of record in any suit or proceeding in any court of the United States to which an Indian or Indian tribe or group was a party, and the appropriate department of the Government of the United States shall give to the attorneys for all tribes or groups full and free access to such letters, papers, documents, maps, or records as may be useful to said attorneys in the preparation of any claim instituted hereunder, and shall afford facilities for the examination of the same and, upon written request by said attorneys, shall furnish certified copies thereof.

REPRESENTATION BY ATTORNEYS

SEC. 15. Each such tribe, band, or other identifiable group of Indians may retain to represent its interests in the presentation of claims before the Commission an attorney or attorneys at law, of its own selection, whose practice before the Commission shall be regulated by its adopted procedure. The fees of such attorney or attorneys for all services rendered in prosecuting the claim in question, whether before the Commission or otherwise, shall, unless the amount of such fees is stipulated in the approved contract between the attorney or attorneys and the claimant, be fixed by the Commission at such amount as the Commission, in accordance with standards obtaining for prosecuting similar contingent claims in courts of law, finds to be adequate compensation for services rendered and results obtained, considering the contingent nature of the case, plus all reasonable expenses incurred

in the prosecution of the claim; but the amount so fixed by the Commission, exclusive of reimbursements for actual expenses, shall not exceed 10 per centum of the amount recovered in any case. The attorney or attorneys for any such tribe, band, or group as shall have been organized pursuant to section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U. S. C., sec. 476), shall be selected pursuant to the constitution and bylaws of such tribe, band, or group. The employment of attorneys for all other claimants shall be subject to the provisions of sections 2103 to 2106, inclusive, of the Revised Statutes (25 U. S. C., secs. 81, 82-84).

The Attorney General or his assistants shall represent the United States in all claims presented to the Commission, and shall have authority, with the approval of the Commission, to compromise any claim presented to the Commission. Any such compromise shall be submitted by the Commission to the Congress as a part of its report as provided in section 21 hereof in the same manner as final determinations of the Commission, and shall be subject to the provisions of section 22 hereof.

NO MEMBER OF CONGRESS TO PRACTICE BEFORE COMMISSION

SEC. 16. No Senator or Member of or Delegate to Congress shall, during his continuance in office, practice before the Commission.

HEARING

SEC. 17. The Commission shall give reasonable notice to the interested parties and an opportunity for

them to be heard an to present evidence before making any final determination upon any claim. Hearings may be held in any part of the United States or in the Territory of Alaska.

TESTIMONY

SEC. 18. Any member of the Commission or any employee of the Commission, designated in writing for the purpose by the Chief Commissioner, may administer oaths and examine witnesses. Any member of the Commission may require by subpena (1) the attendance and testimony of witnesses, and the production of all necessary books, papers, documents, correspondence, and other evidence, from any place in the United States or Alaska at any designated place of hearing; or (2) the taking of depositions before any designated individual competent to administer oaths under the laws of the United States or of any State or Territory. In the case of a deposition, the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall be subscribed by the deponent. In taking testimony, opportunity shall be given for cross-examination, under such regulations as the Commission may prescribe. Witnesses subpenaed to testify or whose depositions are taken pursuant to this Act, and the officers or persons taking the same, shall severally be entitled to the same fees and mileage as are paid for like services in the courts of the United States.

FINAL DETERMINATION

SEC. 19. The final determination of the Commission shall be in writing, shall be filed with its clerk, and shall include (1) its findings of the facts upon which its conclusions are based; (2) a statement (a) whether there are any just grounds for relief of the claimant and, if so, the amount thereof; (b) whether there are any allowable offsets, counterclaims, or other deductions, and, if so, the amount thereof; and (3) a statement of its reasons for its findings and conclusions.

REVIEW BY COURT OF CLAIMS

SEC. 20. (a) In considering any claim the Commission at any time may certify to the Court of Claims any definite and distinct questions of law concerning which instructions are desired for the proper disposition of the claim; and thereupon the Court of Claims may give appropriate instructions on the questions certified and transmit the same to the Commission for its guidance in the further consideration of the claim.

(b) When the final determination of the Commission has been filed with the clerk of said Commission the clerk shall give notice of the filing of such determination to the parties to the proceeding in manner and form as directed by the Commission. At any time within three months from the date of the filing of the determination of the Commission with the clerk either party may appeal from the determination of the Commission to the Court of Claims, which Court shall have exclusive jurisdiction to affirm, modify, or set aside such final determination. On

said appeal the Court shall determine whether the findings of fact of the Commission are supported by substantial evidence, in which event they shall be conclusive, and also whether the conclusions of law, including any conclusions respecting "fair and honorable dealings", where applicable, stated by the Commission as a basis for its final determination, are valid and supported by the Commission's findings of fact. In making the foregoing determinations, the Court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error. The Court may at any time remand the cause to the Commission for such further proceedings as it may direct, not inconsistent with the foregoing provisions of this section. The Court shall promulgate such rules of practice as it may find necessary to carry out the foregoing provisions of this section.

(c) Determinations of questions of law by the Court of Claims under this section shall be subject to review by the Supreme Court of the United States in the manner prescribed by section 3 of the Act of February 13, 1925 (43 Stat. 939; 28 U. S. C., sec. 288), as amended.

REPORT OF COMMISSION TO CONGRESS

SEC. 21. In each claim, after the proceedings have been finally concluded, the Commission shall promptly submit its report to Congress.

The report to Congress shall contain (1) the final determination of the Commission; (2) a transcript of the proceedings or judgment upon review, if any, with the instructions of the Court of Claims; and (3) a statement of

how each Commissioner voted upon the final determination of the claim.

EFFECT OF FINAL DETERMINATION OF COMMISSION

SEC. 22. (a) When the report of the Commission determining any claimant to be entitled to recover has been filed with Congress, such report shall have the effect of a final judgment of the Court of Claims, and there is hereby authorized to be appropriate such sums as are necessary to pay the final determination of the Commission.

The payment of any claim, after its determination in accordance with this Act, shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy.

(b) A final determination against a claimant made and reported in accordance with this Act shall forever bar any further claim or demand against the United States arising out of the matter involved in the controversy.

DISSOLUTION OF THE COMMISSION

SEC. 23. The existence of the Commission shall terminate at the end of ten years after the first meeting of the Commission or at such earlier time after the expiration of the five-year period of limitation set forth in section 12 hereof as the Commission shall have made its final report to Congress on all claims filed with it. Upon its dissolution the records of the Commission shall be delivered to the Archivist of the United States.

FUTURE INDIAN CLAIMS

SEC. 24. The jurisdiction of the Court of Claims is hereby extended to any claim against the United States accruing after the date of the approval of this Act in favor of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska whenever such claim is one arising under the Constitution, laws, treaties of the United States, or Executive orders of the President, or is one which otherwise would be cognizable in the Court of Claims if the claimant were not an Indian tribe, band, or group. In any suit brought under the jurisdiction conferred by this section the claimant shall be entitled to recover in the same manner, to the same extent, and subject to the same conditions and limitations, and the United States shall be entitled to the same defenses, both at law and in equity, and to the same offsets, counterclaims, and demands, as in cases brought in the Court of Claims under section 145 of the Judicial Code (36 Stat. 1136; 28 U. S. C., sec. 250), as amended: *Provided, however,* That nothing contained in this section shall be construed as altering the fiduciary or other relations between the United States and the several Indian tribes, bands, or groups.

EFFECT ON EXISTING LAWS

SEC. 25. All provisions of law inconsistent with this Act are hereby repealed to the extent of such inconsistency, except that existing provisions of law authorizing suits in the Court of Claims by particular tribes, bands, or

groups of Indians and governing the conduct or determination of such suits shall continue to apply to any case heretofore or hereafter instituted thereunder save as provided by section 11 hereof as to the deduction of payments, offsets, counterclaims, and demands.

SEC. 26. If any provision of this Act, or the application thereof, is held invalid, the remainder of the Act, or other applications of such provisions, shall not be affected.

Approved August 13, 1946.

Executive Order, President Zachary Taylor, February 6, 1850

MINNESOTA

The privileges granted temporarily to the Chippewa Indians of the Mississippi, by the Fifth Article of the Treaty made with them on the 29th of July 1837, "of hunting, fishing and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded" by that treaty to the United States; and the right granted to the Chippewa Indians of the Mississippi and Lake Superior, by the Second Article of the treaty with them of October 4th 1842, of hunting on the territory which they ceded by that treaty, "with the other usual privileges of occupancy until required to remove by the President of the United States," are hereby revoked; and all of the said Indians remaining on the lands ceded as aforesaid, are required to remove to their unceded lands.

Z. TAYLOR.

Executive Office
Washington City, February 6th, 1850.

By the PRESIDENT

I. EWING,
Secretary of the Interior.

TERRITORY OF MINNESOTA

Executive Department

St. Paul, Novem. 7, 1849

Hon. Thos. Ewing

Secretary of Interior.

Sir:

I have the honor of transmitting you herewith agreeably to the instructing of the Territorial Legislative Assembly the copy of "a joint resolution relating to the removal of the Chippewa Indians from the ceded lands within the Territory of Minnesota;

Very respectfully,

Your obt. servant,

/s/ ALEX RAMSAY

MINNESOTA Ty.

Alex Ramsey, Govr. – Nov. 7, 1849 – M 675

Joint resolutions of Legislature relative to removal of the Chippewa Indians from the ceded lands within the Ty. of Minnesota.

Sec. I. 347.

(From Dept. Interior)
Fed. Office.

Commr. of Indian Affairs – Dept. of the Interior.

January 26, '50

Rec'd. 28 Jan. 1850

Rpt. made 1 Feby. 1850

Joint Resolutions relative to the removal of the Chippewa Indians from the ceded lands within the Territory of Minnesota.

Resolved by the legislative Assembly of the Territory of Minnesota, that to ensure the security and tranquillity of the white settlements in an extensive and valuable district of this Territory, the Chippewa Indians should be removed from all lands within the Territory to which the Indian Title has been extinguished, and that the privileges given to them by Article Fifth of the Treaty of July twenty sixth, one thousand, eight hundred and thirty seven, with the Chippewa Indians & c. and Article Second of the Treaty with the Chippewa of the Mississippi October fourth one thousand, eight hundred and forty two, be revoked.

Resolved that the Honorable Henry H. Sibley, Delegate from this territory to the Congress of the United States, be and is hereby requested to urge upon Congress the necessity of freeing the territory from the Indian population within its limits, so far as it has been ceded; and to locate them on such a country as the General government shall judge best calculated for their residence and to which the white settlements have not yet extended.

Resolved that his Excellency the Governor of this territory be requested to transmit one copy of the foregoing resolutions to the Honorable H.H.Sibley, Delegate to Congress from this territory; to the Honorable the President of the Senate; to the Honorable the Speaker of the House of Representatives, and to the Honorable Secretary of the Home Department.

Joseph W. Forbes,
Speaker of the House
of Representatives
Wm. Henry Forbes,
President of the
Council, Pro. Terr.

Approved the eleventh day of October, one thousand eight hundred and forty nine.

ALEX RAMSEY

Office of the Secretary of Terri

St. Paul, October 24th, 1849

I certify the within to be true copy of the original resolutions on file in my office.

Q. K. Smith

Secretary of Minn. Territory

CHAPTER XIX.

An Act for the Protection of Game.

SECTION 1. **Prohibits killing of Deer and Elk between First of February and or September – Penalty.**

2. **Prohibits killing of Grouse, Prairie-chickens, Partridge or Quail from fifteenth of February to the fifteenth of July.**

3. **Act takes effect on passage.**

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That if any person shall, within this State, kill any deer or elk between the first day of February and the first day of September following, he shall, for every such offense, forfeit and pay the sum of fifteen dollars, to be collected by a civil action before any Justice of the Peace having jurisdiction thereof, which sum so recovered, shall be paid by such Justice to the proper officer, for the use in common schools in the school district where the offense was committed.

SEC. 2. If any person shall, within this State, shoot, trap or kill in any manner, any grouse, prairie-chicken, partridge or quail between the fifteenth day of February and the fifteenth day of July following, he shall for every such offense, forfeit and pay the sum of five dollars, to be collected in the same manner and paid over to the same use as is provided in the preceding section.

SEC. 3. This Act shall take effect from and after its passage.

GEORGE BRADLEY,
Speaker *pro tem.* of the House of Representatives.

RICHARD G. MURPHY,
President *pro tem.* of the Senate.
APPROVED – March eight, eighteen hundred and fifty-eight

CHAS. L. CHASE, Acing Governor.

SECRETARY'S OFFICE, Minnesota,)
March 5, 1858.)

I hereby certify the foregoing to be a true copy of the original on file in this office.

CHAS. L. CHASE, Secretary.

CHAPTER XLIV.

An Act to extend the laws of the State over all the Indian tribes within the boundaries of the State, and to confine them to their own lands.

SECTION **1. Indians out of their reservations subject to the laws of the State, and punished for misdemeanors and violations of law.**

2. Indians required to have passes from Superintendent to leave reservation and reside on other lands.

3. Sheriffs and other officers to remove all Indians not complying with preceding section.

4. Act takes effect on passage.

5. Repeals all Acts contravening its provisions.

Be it enacted by the Legislature of the State of Minnesota:

SECTION I. That if any Indian or Indians shall enter upon the limits of this State, or cross the boundary line of their reservation, and there take, steal, or destroy any property, real or personal, belonging to any citizen or inhabitant of this State, or shall commit any murder, violence, or outrage upon any such citizen or inhabitant, or shall commit any crime, offense or misdemeanor whatever, recognized by the laws of this State as a crime, offence or misdemeanor, he or they shall be subject to the existing laws of this State, and shall be punished accordingly; *Provided,* These laws shall not extend to crimes committed by one Indian against the person or property of another Indian, except in the case of murder.

SEC. 2. No Indian or Indians belonging to any tribe, or bands whatever, within the limits of this State, shall be allowed to leave his or their reservations and cross the boundary line thereof, and go into or upon the lands, settlements and claims belonging to the white inhabitants, or build or erect any tent, tents or tepees upon any such lands as above said, without having a pàssport from the Superintendent, Agent or Sub-Agent of Indian Affairs, or from the officer of the United States commanding the nearest military fort on the frontier; or shall remain intentionally therein after the expiration of such passport; *And be it further provided,* said passport shall express the object, the time he or they are allowed to remain, and the route they shall travel, nor shall such passport confer upon any Indian or Indians the right or power for hunting or fishing on any such grounds as belong to the white inhabitants.

SEC. 3. It shall be lawful for any Sheriff, Constable or any other county or town officer, to remove any Indian or Indians from lands, settlements or claims belonging to white inhabitants, if he or they have not complied with the provisions of the foregoing section; and it shall moreover be lawful, and shall be the duty of every peace officer in respective counties and towns, in such cases as above stated to call to their aid such persons or power as they may deem necessary.

SEC. 4. This Act shall take effect and be in force from and after its passage.

SEC. 5. All acts or parts of acts contravening the provisions of this Act are hereby repealed.

GEORGE BRADLEY,
Speaker of the House of Representative
WILLIAM HOLCOMBE,
President of the Senate

APPROVED – July twentieth, one thousand eight hundred and fifty-eight.

HENRY H. SIBLEY

SECRETARY'S OFFICE, Minnesota,)
July 20, 1858.)

I hereby certify the foregoing to be a true copy of the original on file in this office.

FRANCIS BAASEM, Secretary of State

CHAPTER XLV.

An Act for the Protection of Trout Fish.

SECTION 1. **Forbids the taking of Trout Fish, by sein,[2] net, basket or trap.**

2. **Penalty for violation of this Act.**

Be it enacted by the Legislature of the State of Minnesota:

Prohibition

SECTION 1. That all persons are hereby forbidden to take trout from any waters of this State, by means of any sein, net, basket, or trap.

Penalty 1

SEC. 2. That any and all persons upon being convicted of a violation of the provisions of this Act, shall pay a fine of not more than twenty-five, nor less than five dollars, which fine shall be paid into the school fund in the county where the offense was committed, and the conviction had.

SEC. 3. This Act shall take effect and be in force from and after the first day of August, 1858.

GEORGE BRADLEY,
Speaker of the House of Representatives
WILLIAM HOLCOMBE,
President of the Senate

APPROVED – July the thirtieth, eighteen hundred and fifty-eight.

HENRY H. SIBLEY

SECRETARY'S OFFICE, Minnesota,)
July 30, 1858.)

I hereby certify the foregoing to be a true copy of the original on file in this office.

FRANCIS BAASEM, Secretary of State

Letter, Roosevelt to Whitebird, March 1, 1938. File 52121-1930-115: Lac Du Flambeau Agency, Box 6, CCF, RG75, NA.

THE WHITE HOUSE

WASHINGTON

Forestry and Grazing
7542-38

March 1, 1938

Mr. Gus Whitebird,
Bad River Indian Reservation,
Odanah, Wisconsin.

My dear Mr. Whitebird:

Your letter of January 28, relative to the right of the Indians of the Bad River Reservation in Wisconsin to hunt and fish on areas ceded by the Chippewa Tribe to the United States, has, in accordance with your request, been transmitted to me by Hon. B. J. Gehrmann.

The Chippewa Tribe ceded a large part of northern Wisconsin in treaties with the United States which were concluded on July 29, 1837 (7 Stat. 536), and October 4, 1842 (7 Stat. 591). These treaties temporarily reserved to the Indians the right to hunt and fish on the area ceded by them until such right was revoked by the President of the United States. The Indians enjoyed these special hunting and fishing privileges until President Taylor issued the following order under date of February 6, 1850:

> The privileges granted temporarily to the Chippewa Indians of the Mississippi by the fifth article of the treaty made with them on the 29th of July, 1837, "of hunting, fishing and gathering

> the wild rice, upon the lands, the rivers and the lakes included in the territory ceded" by that treaty to the United States; and the right granted to the Chippewa Indians of the Mississippi and Lake Superior, by the second article of the treaty with them of October 4th, 1842, of hunting on the territory which they ceded by that treaty, "with the other usual privileges of occupancy until required to remove by the President of the United States", are hereby revoked; and all of the said Indians remaining on the lands ceded an aforesaid, are required to remove to their unceded lands.

Since the special hunting and fishing privileges temporarily reserved to the Chippewa Indians on the areas in Michigan and Wisconsin ceded by the above-mentioned treaties were revoked by order of the President, the Indians of the Bad River Reservation now have no greater right to hunt or fish on the ceded area within which their reservation is located than do the other citizens of the State. Therefore, the Indians who hunt or fish or who have fish and game in their possession outside of their reservation or on lands under the jurisdiction of the State within their reservation are amenable to the State game laws and are subject to arrest and conviction or violation thereof.

The Bad River Reservation was established by the treaty of September 30, 1854, between the Chippewa Indians of Lake Superior and the Mississippi and the United States, for the La Point Band and such other Indians as may see fit to settle with them. Subsequently, the Indians who were entitled to live on the reservation, participate in the use of tribal resources, and receive

allotments of tribal land in severalty, were entered on a tribal roll. Those Indians who were so enrolled and those Indians who are members of the Band under its Constitution adopted under the act of June 18, 1934 (48 Stat. 984), are privileged to hunt and fish on the Band River Reservation, subject to any regulations to protect the wild life of the reservation promulgated by the tribal council under section 1(t) of Article VI of the Constitution. Other Indians may be required to obtain the permission of the tribal authorities to hunt and fish thereon, which requirement may be enforced under section 1(q) or 1(s) of Article VI of the Constitution.

The State has authority to send its officers into the Bad River Reservation and other Indian reservations for the purpose of enforcing its laws among the non-Indians found thereon. These officers, however, have no authority to enforce State laws among the Indians on restricted lands within a reservation regardless of whether the Indians are enrolled, provided such Indians have not become subject to the laws of the State in which they reside.

I sympathize with the Indians who find it difficult to adjust themselves to meet conditions which must be imposed to conserve the wildlife resources of our country. Due to the rapidly diminishing wildlife resources through unregulated hunting and fishing, the several States have found it necessary to pass and enforce game laws so as to protect and conserve these resources. I hope that the Indians, to whom fish and game are so important, will not only cooperate with state officials in the conservation of wildlife resources on lands under the jurisdiction of the State, but will take the initiative in the

conservation of such resources on restricted Indian lands within their reservations.

Very sincerely yours,